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A

TREATISE

OF THE

PLEAS OF THE CROWN;

OR,

A SYSTEM

OF THE

PRINCIPAL MATTERS RELATING TO THAT SUBJECT,

DIGESTED UNDER PROPER HEADS.

By WILLIAM HAWKINS,

SERJEANT AT LAW.

THE SEVENTH EDITION:

In which the Text is carefully collated with the original Work; the marginal References corrected; new References from the modern Reporters added; a Variety of *Manuscript Cases* inserted; and the whole enlarged by an Incorporation of the several Statutes upon Subjects of Criminal Law, to the THIRTY-FIFTH YEAR OF GEORGE THE THIRD. To which an Explanatory Preface is prefixed, and new and copious Indexes are subjoined.

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AN

ANALYSIS

OF

THE SECOND VOLUME

OF THE

PLEAS OF THE CROWN.

OFFENCES more immediately againſt the ſubject, not capital, are of two kinds:

1. Miſpriſion of felony, c. 59.
2. Other inferior offences.

Such inferior offences are of two kinds:

1. Such as amount to an actual diſturbance of the peace.
2. Such as do not amount to ſuch a diſturbance.

For the prevention of the former of theſe kinds of offences, the law has provided two remedies:

1. By ſurety for keeping the peace, c. 60.
2. By ſurety for the good behaviour, c. 61.

Of the abovementioned offences amounting to the actual diſturbance of the peace, there are two kinds:

1. Such as may be committed by one or two perſons.
2. Such as require a greater number.

Of thoſe which may be committed by one or two perſons, there are four kinds:

1. Aſſaults, c. 62. ſ. 1.
2. Batteries, c. 62. ſ. 2.
3. Affrays, c. 63.
4. Forcible entries and detainers, c. 64.

Of thoſe which require a greater number of perſons there are three kinds:

1. Riots, c. 65 ſ. 1.
2. Routs, c. 65 ſ. 8.
3. Unlawful aſſemblies, c. 65 ſ. 9.

Of ſuch inferior offences not amounting to an actual diſturbance of the peace, there are two kinds:

1. Such as are committed by officers.
2. Such as are committed by common perſons, without any relation to an office.

Of offences of this nature, committed by officers, there are three ſpecies:

1. Neglect or breach of duty, c. 66.
2. Bribery,

2. Bribery, c. 67.
3 Extortion, c. 68.

Of offences of this nature, committed by private perſons, without any relation to any office, there are two kinds:

1. Such as are infamous and groſsly ſcandalous, proceeding from principles of downright diſhoneſty, malice, or faction.
2. Such as are of an inferior nature, and neither infamous nor groſsly ſcandalous.

Of offences of the firſt ſort, there are ſeven ſpecies:

1. Perjury, c. 69.
2. Forgery, c. 70.
3. Cheats, c. 71.
4. Conſpiracy, c. 72.
5. Libels, c. 73.
6. Keeping of a bawdy-houſe, c. 74.
7. Or other unlawful place, c. 74.

Of offences of the latter ſort, there are two kinds:

1. Such as more immediately affect the public.
2. Such as more immediately affect the intereſts of particular perſons.

Of thoſe which more immediately affect the public, there are four kinds:

1 Common nuiſances, c. 75.
2. Monopolies, c 79.
3. Foreſtalling, engroſſing, and regrating, c. 80.
4. Barratry, c. 81.

The moſt remarkable kinds of common nuiſances are,

1. Such as relate to highways and turnpike roads.
2. Such as relate to public-houſes, c. 78.

Thoſe which relate to highways come under a twofold conſideration:

1. As they relate to highways and turnpike roads in general, c. 76.
2. As they relate to bridges in particular, c. 77.

Of the offences above-mentioned more immediately affecting the intereſts of particular perſons there are three kinds:

1. Uſury, c. 82.
2. Maintenance.
3. Buying or ſelling a pretended title, c. 86.

Maintenance is two-fold:

1. *Ruralis*, c. 63. ſ. 2.
2. *Curialis*, c. 82. ſ. 3.

Of maintenance *curialis* there are three ſpecies:

1. General maintenance, c. 83. ſ. 4.
2. Champerty, c. 84.
3. Embracery, c. 85.

And to the above offences are now added the laws reſpecting,

1. Seducing artificers, c. 87.
2. The offence of exporting tools, c. 88.
3. Embezzling naval ſtores, c. 89.
4. Exerciſing trade without ſerving an apprenticeſhip, c. 90.
5. Dog-ſtealing, c. 91.
6. Gaming, c. 92.
7. Strolling-players, c. 93.
8. And vagrants, c. 94.

A

TREATISE

OF

THE PLEAS OF THE CROWN,

BOOK THE FIRST.

CHAPTER THE FIFTY-NINTH.

OF MISPRISION OF FELONY.

OFFENCES more immediately againſt the ſubject, not capital, are either *miſpriſion of felony*, or other *inferior offences*. 3. Inſt. 36. 1. Hale 374, 375. 652. 708.

Sect. 1. It is ſaid, that every *felony* includes *miſpriſion of felony*, and may be proceeded againſt as *a miſpriſion* only, if the king pleaſe, as hath been ſhewn already in chapter twenty. 1. B. Treaſ 25. 2. Rich. 3. 10. S. P. C. 32.

Sect. 2. But generally *miſpriſion of felony* is taken for a concealment of felony (1), or a procuring of the concealment thereof, whether it be felony by the common law, or by ſtatute. Summary 129. S. P. C. 37. c. 3. Inſt. 139.

(1) Silently to obſerve the commiſſion of a felony, without uſing any endeavours to apprehend the offender, is a miſpriſion. 1. Hale 431. 448. 533. 2. Hale 75. 2. Hawk. c. 12. For a man is bound to diſcover the crime of another, to a magiſtrate, with all poſſible expedition. 3. Inſt. 140. So alſo the concealment of *treaſure trove* is miſpriſion of felony. 4. Comm. 121. 3. Inſt. 133.

Sect. 3. For this offence every common perſon is puniſhable by fine and impriſonment at common law. And by the *ſtatute of Weſtminſter* 3. Edw. 1. c. 9. "If the ſheriff, "coroner, or any other bailiff within a franchiſe, or without, for reward, or for prayer, or for fear, or for any "manner of affinity, conceal, conſent, or procure to conceal the felonies done in their liberties; or otherwiſe will "not attach nor arreſt ſuch felons (there as they may), or "otherwiſe will not do their office, for favour borne to B. Treaſ. 25. 3. Inſt. 173.

" ſuch miſdoers, and be attainted thereof, they ſhall have " one year's impriſonment, and after make a grievous fine " at the king's pleaſure, if they have wherewith; and if " they have not whereof, they ſhall have impriſonment of " three years."

Sect. 4. By 3. Hen. 7. c. 1. " The juſtices of the " peace of every ſhire of this realm, for the time being, " may take by their diſcretion an inqueſt, whereof every " man ſhall have lands and tenements to the yearly value of " forty ſhillings, at the leaſt, to enquire of the conceal- " ments of other inqueſts taken before them, and afore " other, of ſuch matters and offences as are to be enquired " and preſented afore juſtices of the peace, whereof com- " plaint ſhall be made by bill, or by bills, as well within " franchiſe as without. And if any ſuch concealment be " found of any inqueſt, as is afore rehearſed, had or made " within the year after the ſame concealment, every perſon " of the ſame inqueſt to be amerced for the concealment, " by diſcretion of the ſame juſtices of the peace; the ſaid " amerciaments to be ſeſſed in plain ſeſſions."

1. Hale 619. S. P. C. 40. 3. Inſt. 134. Summary 130.

Sect. 5. To this title of *miſpriſion of felony*, that of *theft-bote* ſeems not improperly reducible, which is where one not only knows of a felony, but takes his goods again, or other amends, not to proſecute.

F. Cor. 353. 2. Hale 400. 2. And. 47. Cro. Eliz. 486. 536. B. 2. c. 29. 1. 26, &c.

Sect. 6. This offence is very nearly allied to felony, and is ſaid to have been anciently puniſhed as ſuch. But at this day it is puniſhable only with ranſom and impriſonment, unleſs it were accompanied with ſome degree of maintenance given to the felon, which makes the party an acceſſary after the fact.

B. Cor. 122. 42. Aſſ. Sum. 130. 1. R. Abr. 67. F. Aſſ. 346.

Sect. 7. But the bare taking of one's own goods again which have been ſtolen, is no offence at all, unleſs ſome favour be ſhewn to the thief (2).

(2) To take any reward for helping any perſon to ſtolen goods, is made felony by 4. Geo. 1. c. 11. And to advertiſe a reward for the return of things ſtolen, incurs a forfeiture of fifty pounds, by 25. Geo. 2. c. 36. for which vide ante, Appendix the eighth.

CHAP-

CHAPTER THE SIXTIETH.

Of SURETY of the PEACE.

INFERIOR offences more immediately againſt the ſubject not capital, either amount to an actual diſturbance of the peace, or do not.

And first I ſhall conſider ſuch offences of this kind, as amount to an actual diſturbance of the peace.

But before I deſcend to the ſeveral kinds thereof, it may not be improper firſt to ſhew what *ſecurity* may be had againſt the breach of the peace, before it happens. Dalt. c. 116. 4. Comm. 248.

And in order hereto, I ſhall examine how the breach may be ſecured.

First, By ſurety for keeping the peace.

Secondly, By ſurety for the good behaviour.

As to surety *for keeping the peace*, I ſhall conſider the following particulars:

1. In what caſes it ought to be taken *ex officio*.
2. At whoſe requeſt it ought to be granted.
3. Againſt whom it ought to be granted.
4. For what cauſe it is grantable.
5. In what manner it is grantable by the courts of chancery and king's bench.
6. In what manner it is grantable by a juſtice of peace.
7. In what manner the proceſs for it ought to be executed.
8. How ſuch proceſs may be ſuperſeded.
9. What ought to be the form of a recognizance for this purpoſe.
10. How ſuch a recognizance may be diſcharged.
11. How ſuch a recognizance ought to be certified and proceeded upon.
12. How it may be forfeited.

As to THE FIRST POINT, *viz.* In what caſes ſurety of the peace ought to be taken *ex officio*.

Dalt.c.67.158. Lamb.77, 78. 9. Ed. 4. 3. B. Peace, 7, 8. Cromp. 135. 142. 21. E. 4. 40. Foſter 135.

Sect. 1. It ſeems, that any juſtice of peace may, according to his diſcretion, bind all thoſe to the peace who in his preſence ſhall make any affray, or ſhall threaten to kill or beat any perſon, or ſhall contend together with hot words, or ſhall go about with unuſual weapons or attendants, to the terror of the people.

And alſo all ſuch perſons as ſhall be known by him to be common barrators:

And alſo all thoſe who ſhall be brought before him by a conſtable for a breach of the peace in the preſence of ſuch conſtable:

And all ſuch perſons who, having been before bound to keep the peace, ſhall be convicted of having forfeited their recognizance (1).

(1) Conſervators of the peace alſo may grant ſurety according to their diſcretion. 4. Burr. 250. And this ſeems to have been the principal duty of a conſervator. 11. St. Tr. 316. A ſecretary of ſtate, therefore, nor a privy councillor, ever bind to the peace or the good behaviour, for they are not, as ſuch, conſervators of the peace. LORD HOLT indeed, in the caſe of Kendal, Roe, and others, ſo conſidered them; but LORD CAMDEN affirms, that no treatiſe, caſe, record, or ſtatute, has ever called them conſervators of the peace from the beginning of time down to that deciſion. 11. St. Tr. 317.

As to THE SECOND POINT, *viz.* At whoſe requeſt the ſurety of the peace ought to be granted.

Dalt. c. 68. Lamb. 78, 79. Crom.133.134.

Sect. 2. It ſeems agreed at this day, that all perſons whatſoever under the king's protection, being of ſane memory, whether they be natural and good ſubjects, or aliens, or attainted of treaſon, &c. have a right to demand ſurety of the peace.

Dalt. c. 68. Lamb. 80. 4.Comm.250.

Sect. 3. But it has been queſtioned, whether *Jews* or *Pagans*, or perſons attainted of *præmunire*, have a right to it or not.

Regiſter 89. 3. Keb. ſ. 433. Ld. Hard. Caſes, 74.

Sect. 4. However it is certain, that a wife may demand it againſt her huſband threatening to beat her outrageouſly, and that a huſband alſo may have it againſt his wife (2).

Strange 1207. Dalt. c. 68. Lamb. 78. Crom. 133. 3. Lev. 128. F. N. B. 80. Rex *v.* A. R. Bowes, 1. Term Rep. 696. Rex *v.* Earl Ferrers, 1. Burr. 635.

(2) And if the marriage be diſputed, the Court will order the recognizance to be worded ſo as not to admit the fact. Str. 1231.

As

As to THE THIRD POINT, *viz.* Againſt whom the ſurety of the peace ought to be granted.

Sect. 5. There ſeems to be no doubt but that it ought, upon a juſt cauſe of complaint, to be granted by any juſtice of peace againſt any perſon whatſoever, under the degree of nobility, being of ſane memory, whether he be a magiſtrate or private perſon, and whether he be of full age, or under age, &c. But *infants* and *femes covert* ought to find ſecurity by their friends, and not to be bound themſelves; and the ſafeſt way of proceeding againſt *a peer* is by complaint to the court of chancery or king's bench (3). Dalt. c. 68. Lamb. 81, 82. Cromp. 134. 3. Keb. 433. 2. Lev. 128. See the books above cited, and Fitz. Subpœna 20.

(3) It is ſaid, the fear of one cannot be the fear of another, and therefore every recognizance muſt be ſeparate, Pult. 18. But in Mich. 23. Geo. 2. B. R. the Court allowed three women to file joint articles of the peace againſt three men. The King *v.* Nettle, &c. MSS. See alſo 4. Com. Dig. "Juſtices of Peace," (B. 5.)

As to THE FOURTH POINT, *viz.* For what cauſe the ſurety of the peace is grantable.

Sect. 6. It ſeems clear, that wherever a perſon has juſt cauſe to fear that another will burn his houſe, or do him a corporal hurt, as by killing, or beating him, or that he will procure others to do him ſuch miſchief, he may demand the ſurety of the peace againſt ſuch perſon; and that every juſtice of peace is bound to grant it, upon the party's giving him ſatisfaction upon oath that he is actually under ſuch fear; and that he has juſt cauſe to be ſo, by reaſon of the other's having threatened to beat him, or lain in wait for that purpoſe; and that he does not require it out of malice, or for vexation. Dalt. c. 67. Lamb. 82. Crom. 135. 1. Lev. 107. 2. Lev. 228. F. N. B. 801. Reg. 88. Moor 874. Godb. 215. 1. Keb. 290.

Sect. 7. It ſeems alſo the better opinion, that he who is threatened to be impriſoned by another, has a right to demand the ſurety of the peace; for every unlawful impriſonment is an aſſault and wrong to the perſon of a man: and the objection, that one wrongfully impriſoned may recover damages in an action, &c. and therefore needs not the ſurety of the peace, is as ſtrong in the caſe of battery as impriſonment; and yet there is no doubt, but that one threatened to be beaten may demand the ſurety of the peace (4). Dalt. c. 67. Lamb. 82, 83. Con. 17. Ed. 4. pl. 4. B. Peace 22. Crom. 134.

(4) And although the fact from which the fear ariſes be pardoned, the Court will receive it as a ground to grant the ſecurity upon. Str. 473.

As to THE FIFTH POINT, *viz.* In what manner ſuch ſurety is grantable by the courts of chancery and king's bench.

See 1. Lev. 53. 1. Sid. 67. Skin. 61. Mullineux's caſe, Comb. 427.

Sect. 8. It is enacted by 21. Jac. 1. c. 8. "That all "proceſs for the peace or good behaviour to be granted "or awarded out of the ſame courts, or either of them, "againſt any perſon or perſons whatſoever, at the ſuit of, "or by the proſecution of any perſon or perſons whatſoever, "ſhall be void and of none effect, unleſs ſuch proceſs ſhall "be ſo granted or awarded, upon motion firſt made before "the judge or judges of the ſame courts reſpectively (ſitting "in open court, and upon declaration in writing upon "their corporal oaths, to be then exhibited unto them, by "the parties which ſhall deſire ſuch proceſs), of the cauſes "for which ſuch proceſs ſhall be granted or awarded by "or out of the ſaid courts reſpectively, and unleſs that "ſuch motion and declaration be mentioned to be made "upon the back of a writ; the ſaid writings there to be "entered and remain of record; and that if it ſhall after-"wards appear unto the ſaid courts, or either of them "reſpectively, that the cauſes expreſſed in ſuch writings, "or any of them, be untrue, that then the judge or judges "of the ſaid courts, or either of them reſpectively, ſhall "and may award ſuch coſts and damages upon the parties "grieved, for their, or any of their wrongful vexations in "that behalf, as they ſhall think fit; and that the party or "parties ſo offending ſhall and may be committed to pri-"ſon by ſuch judge or judges, until he or they pay the ſaid "coſts and damages (5).

(5) A peer or peereſs cannot be bound over in any other place than the courts of king's bench, or chancery. 4. Comm. 251. A peereſs may demand ſurety againſt her lord, as in the caſes of the Marquis of Carmarthen. Foſter 359. Lord Vane, Str. 1202. Earl of Stamford, Hardw. Caſes 74. Earl Ferrers, Burr. 631, 703. Lady Strathmore, Eaſ. 25. Geo. 3. 1. Term Rep. 696. Lord Howard, 11. Mod. 109. 3. Burr. 1922. The articles alſo muſt be verified by the *oath* of the exhibitant; an *affirmation* therefore is not ſufficient. Str. 527. 12. Mod. 243. Nor will the Court permit the truth of the allegations to be controverted by the defendant, but will order ſecurity to be taken immediately, if no objections ariſe upon the face of the articles themſelves. Str. 1202. But if on an application for the aſſiſtance of the Court to enforce the ſubſequent proceſs, the articles ſhould manifeſtly appear, from the corroborated affidavit of the defendant, to have been a *malicious*, *voluntary*, *and groſs perjury*, the Court will reſiſt the application, and commit the offender. 2. Burr. 806. 3. Burr. 1922. Nor will the Court receive articles of the peace, if the parties live at a diſtance in the country, unleſs they have previouſly made application to a juſtice in the neighbourhood. 2. Burr. 780. And if the Court do receive them, the ſecondary may indorſe the attachment, in the ſum required, and order a juſtice of the country to take the ſecurity. 2. Burr. 1039. 1. Black. 233. Or, if very particular circumſtances attend the caſe, the Court will compel the juſtices by *mandamus*. Strange 835. But that this is a ſingular inſtance, vide Sayer 253.

As

As to THE SIXTH POINT, *viz.* In what manner ſuch ſurety is grantable by a juſtice of peace.

Sect. 9. It ſeemeth certain, that if the perſon to be bound be in the preſence of the juſtice, he may be immediately committed, unleſs he offer ſureties; and from hence it follows, *à fortiori*, that he may be commanded by word of mouth to find ſureties, and committed for his diſobedience; but it is ſaid, that if he be abſent, he cannot be committed without a warrant from ſome juſtice of peace, in order to find ſureties, and that ſuch warrant ought to be under ſeal, and to ſhew the cauſe for which it is granted, and at whoſe ſuit; and that it may be directed to any indifferent perſon (6). 14. H. 7, 8, 9, 10. 9. Ed. 4. 3. B. Mainpr. 39 Lamb. 85, &c. Dalt. c. 69. 2. Wilſ. 158.

(6) A juſtice cannot enjoin another to keep the peace under a penalty. 3. Com. Dig. 370. Nor commit for not finding ſecurity, until the party has been required, and has refuſed ſo to do. Per Pratt, King *v.* Wilks, E. 3. Geo. 3.

As to THE SEVENTH POINT, *viz.* In what manner the proceſs for the peace ought to be executed.

Sect. 10. It ſeems needleſs to give a particular account of the execution of the writ of *ſupplicavit*, becauſe I do not find that it is much in uſe at this day, and therefore I ſhall refer the reader for this purpoſe to *Fitzherbert's Natura Brevium, fol.* 80, *&c.* (7) Reg. 88. 1. Keb. 203. 290. 6. Mod. 43. 2. P. Will. 202. Skinner 61. 2. Keb. 305. 1. Sid. 67. 1. Lev. 53.

(7) If there be no proceedings on a *ſupplicavit* within a year, the recognizance is, of courſe, diſcharged; and if the party be committed after the expiration of that time, he ſhall be diſcharged upon very ſlight ſecurity. Fitzg. 268. If taken below, and the party appear purſuant to the condition, no indictment being lodged, he muſt be diſcharged. Hard. Ca. But the Court in diſcretion may refuſe to diſcharge a recognizance, even though the exhibitant appear and conſent; for a breach againſt any other perſon is equally a forfeiture. 11. Mod. 109.

But as to the execution of *a warrant* of a juſtice of the peace, the following rules are to be obſerved.

Sect. 11. FIRST, It can be executed only by the perſons to whom it is directed, or ſome of them, unleſs it be directed to the ſheriff, who may, either by parole, or by precept in writing, authorize an officer ſworn and known, to ſerve it, but cannot impower any other perſon without a precept in writing. Lamb. 89.

Sect. 12. SECONDLY, If the warrant be made in the common form, directing the officer to cauſe the party complained of to come before ſome juſtice of the peace to find ſufficient ſurety, &c. and if he ſhall refuſe ſo to do, to convey him immediately to priſon, without expecting any further warrant, until he ſhall willingly do the ſame, &c. the officer who ſerves it, before he makes any arreſt, ought firſt L. Quinto, 5. Ed. 4. 12, 13. B. Falſe Imp. 18. Dalt. c. 69. Lamb. 90, 91. Crom. 235. 5. Co. 59. 6. Co. 54.

to do either, he may carry him to the gaol by force of the ſame warrant without more.

Dalt. c. 69. Brook Falſe Impriſonment 11. 21. H. 7. 21. Lamb. 94, 95.

Sect. 13. THIRDLY, If the warrant ſpecially direct, that the party ſhall be brought before the juſtice who made it, the officer ought not to carry him before any other. But if the warrant be general, to bring him before any juſtice of peace, &c. the officer has the election to bring him before what juſtice he pleaſes, and may carry him to priſon for refuſing to find ſurety before ſuch juſtice.

As to THE EIGHTH POINT, *viz.* How ſuch proceſs may be ſuperſeded.

Dalt. c. 69.

Sect. 14. It is ſaid, that if one who fears that the ſurety of the peace will be demanded againſt him, find ſureties before any juſtice of the peace of the ſame county, either before or after a warrant is iſſued againſt him, he may have a *ſuperſedeas* from ſuch juſtice, which ſhall diſcharge him from arreſt from any other juſtice, at the ſuit of the ſame party, for whoſe ſecurity he has given ſuch ſurety. Alſo it is ſaid, that an appearance upon a recognizance for the peace may be ſuperſeded, by finding ſureties in the chancery or king's bench, and purchaſing a writ teſtifying the ſame. But this practice having often been abuſed by turbulent perſons, who deſervedly fearing to be bound to the peace or good behaviour, by juſtices of peace, would procure themſelves to be bound thereto in the ſaid courts, upon inſufficient ſureties, or upon the colourable proſecution of ſome perſon who would be ready at all times to releaſe them at their pleaſure, whereupon writs of *ſuperſedeas* had been often directed to juſtices of peace, commanding them to forbear to arreſt the parties for ſuch cauſes, by reaſon whereof ſuch turbulent perſons uſed to miſdemean themſelves among their neighbours with impunity, as it is recited by 21. Jac. 1. c. 8. it is thereupon enacted by the ſaid ſtatute, "That all writs of *ſuperſedeas* to be granted "out of either of the ſaid courts, ſhall be void, unleſs ſuch "proceſs be granted upon motion in open court firſt made, "&c. upon ſuch ſufficient ſureties, as ſhall appear unto the "judge or judges of the ſame court reſpectively, upon oath, "to be aſſeſſed at five pounds lands, or ten pounds in "goods, in the ſubſidy book, at the leaſt; which oaths, "and the names of ſuch ſureties, with the places of their "abode, and where they ſtand ſo aſſeſſed in the ſubſidy "books, ſhall be entered, and remain of record in the ſame "courts; and unleſs it ſhall alſo firſt appear unto the ſaid "judge or judges, from whom ſuch *ſuperſedeas* is deſired, "that the proceſs of the peace, or good behaviour, is pro-"ſecuted

Lamb. 112, 113. See 2. R. Abr. 492.

2. Chan. Rep. 68.

Vide ante, f. 8. 2. Burr. 806.

to require the party to go with him, and find ſureties according to the purport of the warrant; but upon his refuſal "ſecuted againſt him or them, deſiring ſuch *ſuperſedeas* "*bona fide*, by ſome party grieved, in that court, out of "which ſuch *ſuperſedeas* is deſired to be ſo awarded and "directed."

As to THE NINTH POINT, *viz.* What ought to be the form of ſuch a recognizance.

Sect. 15. If it be taken in purſuance of a writ of *ſupplicavit*, it muſt be wholly governed by the directions of ſuch writ; but if it be taken before a juſtice of peace, upon a complaint below, it ſeems that it may be regulated by the diſcretion of ſuch juſtice, both as to the number and ſufficiency of the ſureties, and the largeneſs of the ſum, and the continuance of the time, for which the party ſhall be bound. And it hath been ſaid, that a recognizance to keep the peace as to *A. B.* for a year, or for life, or without expreſſing any certain time (*a*) (in which caſe it ſhall be intended to be for life), or without fixing any time or place for the party's appearance, or without binding him to keep the peace againſt all the king's people in general, is good.

Lamb. 100, 101.

Dalt. c. 78.

(*a*) The court of king's bench, on articles of the peace being exhibited, have power to require bail for ſuch length of time as they ſhall think neceſſary for the preſervation of the peace. Rex *v.* Bowes, 1. Term Rep. 696.

Sect. 16. However, it ſeems to be the ſafeſt way to bind the party to appear at the next ſeſſions of the peace, and in the mean time to keep the peace as to the king, and all his liege people, eſpecially as to the party, according to the common form of precedents.

3. Com. Dig. 371. Lamb. 105. Dalt. c. 124.

As to THE TENTH POINT, *viz.* How ſuch a recognizance may be diſcharged.

Sect. 17. It ſeems agreed, that it may be diſcharged by the demiſe of the (*b*) king in whoſe reign it was taken, or of the (*c*) principal party who was bound thereby, if it were not forfeited before. Alſo it hath been holden, that it may be diſcharged by the (*d*) releaſe of the party at whoſe complaint it was taken, being certified together with it. But this may juſtly be queſtioned, becauſe the recognizance is not to the ſubject, but to the king, and conſequently cannot be diſcharged by the ſubject, who is not a party to it. However, ſuch a releaſe will be a good inducement to the court, to which ſuch a recognizance ſhall be certified, to diſcharge it; and ſo alſo will the non-appearance of the party at whoſe complaint it was taken, in order to pray the continuance of it. And yet it is ſaid, that the ſeſſions in

(*b*) B. Peace 15. 17. 1. H. 7. 2. 10.
(*c*) 15. H. 7. 2. 13.
21. Ed. 4. 70. Dalt. c. 71. 1. Lev. 235.
(*d*) Lamb. 110. &c. Crom. 139. 169. 144. 11. H. 7. 12. 11. H. 4. 43. B. 2. c. 36. ſ. 64. c. 37. ſ. 34. 2. Vent. 131. Savil 53.

1 Lev. 235. C. Jac. 282. Yelv. 207. 12. Mod. 251. Str. 835. 2. P. Will. 202. 1. Burr. 703. 3. Burr. 1922.

that

that caſe may, in their diſcretion, refuſe to diſcharge it. However, it is certain that ſuch a recognizance cannot be pardoned, or releaſed by the king, before it is broken, becauſe the ſubject has a kind of intereſt in it. And it is ſaid, that the ſureties are not diſcharged by their death, but that their executors, &c. continue bound as their teſtators, &c. were.

As to THE ELEVENTH POINT, *viz.* How ſuch a recognizance ought to be certified and proceeded upon.

Lamb. 111, 112. &c. Dalt. c. 70. Hil. 1. Geo. 1. K. v. Combs agreed,

Sect. 18. If it be taken by force of a writ of *ſupplicavit*, it needs not be certified till the juſtice receive a writ of *certiorari* to that purpoſe; but if it be taken upon a complaint below, it muſt be certified, ſent, or brought to the next ſeſſion of the peace by force of 3. Hen. 7. c. 1. that the party ſo bound may be called; and by the ſame ſtatute, "If the party then make default, the ſame default ſhall be "recorded, and the ſame recognizance with the record of "the default, ſhall be certified into the chancery, king's "bench, or exchequer." However, if the party have any excuſe for his not appearing, it ſeems that the ſeſſions is not bound peremptorily to record his default, but may equitably conſider of the reaſonableneſs of ſuch excuſe. And it is ſaid, that the ſeſſions cannot in any caſe proceed againſt the party for a forfeiture of his recognizance, either in reſpect of his not appearing or breaking the peace; but that the recognizance in ſuch caſe ought to be removed into ſome of the king's courts of WESTMINSTER-HALL, who ſhall proceed by *ſcire facias* upon ſuch recognizance, and not by indictment, &c.

Sayer 253. Dalt. c. 71. Raym. 169. 196. C. Jac. 598. 1. R. A. 900. Parker 54.

3. Bulſt. 120. Whether ſuch *ſcire facias* muſt ſhew the day on which the ſeſſions Car. 138.

Sect. 19. It ſeemeth that in a *ſcire facias*, upon ſuch a recognizance, it is ſufficient to lay the fact alledged for the breach thereof, as having been done *contra pacem*, without uſing the words *vi et armis*.

was holden, till which the party was bound to keep the peace. Cro.

As to THE TWELFTH POINT, *viz.* How ſuch recognizance may be forfeited.

B. Peace 20. Dalt. c. 72. Lamb. 127, 128. Sayer 139.

Sect. 20. There is no doubt but that it may be forfeited by any actual violence to the perſon of another, whether it be done by the party himſelf, or by others through his procurement, as manſlaughter, rape, robbery, unlawful impriſonment, &c.

Sect.

Sect. 21. Alſo it hath been holden, that it may be forfeited by any treaſon againſt the perſon of the king; and alſo by any unlawful aſſembly *in terrorem populi*; and even by words directly tending to a breach of the peace, as by challenging one to fight, or in his preſence, threatening to beat him, &c.

Lamb. 115 &c. Dalt. c. 72. 2 H. 7. 2. ſeems otherwiſe. 18. Ed. 4. 28. 22. Ed. 4. 35. C. Car. 498, 499. See the books cited in the following ſection, and 2. R. Abr. 545. Pl. 2, 3, 4, 5, 6, 7, 8. 547. E. 3.

Sect. 22. However, it ſeems that it ſhall not be forfeited by bare words of heat and choler, as the calling a man knave, teller of lies, raſcal, or drunkard; for though ſuch words may provoke a cholerick man to break the peace, yet they do not directly challenge him to it, nor does it appear that the ſpeaker deſigned to carry his reſentment any farther. And it has been ſaid, that even a recognizance for the good behaviour, ſhall not be forfeited for ſuch words; from whence it follows *à fortiori*, that a recognizance for the peace ſhall not.

Sayer 140. C. Eliz. 86. Moor 249. 2. Roll. 199. 227. Palmer 126. Infra p. 261.

Sect. 23. Alſo there are ſome actual aſſaults on the perſon of another, which do not amount to a forfeiture of ſuch a recognizance; as if an (*a*) officer, having a warrant againſt one who will not ſuffer himſelf to be arreſted, beat or wound him in the attempt to take him; or if a (*b*) parent in a reaſonable manner chaſtiſe his child, or a maſter his ſervant, (*c*) being actually in his ſervice at the time; or a (*d*) ſchoolmaſter his ſcholar, or a (*e*) gaoler his priſoner, or even a (*f*) huſband his wife, as ſome ſay; or if (*g*) one confine a friend who is mad, and bind and beat him, &c. in ſuch a manner as is proper in ſuch circumſtances; or if a man (*h*) force a ſword from one who offers to kill another therewith, or if a man gently lay his hands upon another, and thereby ſtay him from inciting a dog againſt a third perſon; or if (*i*) I beat one (without (*k*) wounding him, or throwing at him a dangerous weapon) who wrongfully endeavours with violence to diſpoſſeſs me of my land, or goods; or the goods of another delivered to me to be kept for him, and will not deſiſt upon my laying my hands gently on him, and diſturbing him; or if a man beat, (*l*) or, as ſome ſay, wound, or maim one who makes an aſſault upon his perſon, or that of his (*m*) wife, parent, child, or

(*a*) 2. Ed. 4. 6. 21. H. 7. 39. (*b*) Dalt. c. 72. Crom. 136. (*c*) 38. H. 6. 25. 1. Sid. 176. (*d*) Sum 31. 1. Sid. 177. 21. Ed. 4. 6. (*e*) Dalt. c. 72. (*f*) Crom. 28. 136. F. N. B. 80. Hutley 149. Con. 1. Sid. 113. 116. (*g*) 22. Aſſ. 36. 2. R. A. 546. 22. Ed. 4. 5. (*h*) C. Jac. 134. 2. R. A. 546. (*i*) 3. H. 4. 6. 8. Lutw. 1483. C. Jac. 236.

C. Car. 138. 19. H. 6. 31. 10. E. 4. 6. 11. Ed. 4. 28. Keilw. 92. Yelv. 172. 2. R. A. 547, 548, 549. Pult. 5, 6. Crom. 137. Dalt. c. 72. Inf. c. 64. ſ. 1. (*k*) 2. R. Abr. 548. (*l*) 41. Aſſ. 21. 27. Ed. 3. 94. 25. Ed. 3. 42. 8. H. 4. 8. 9. Ed. 4. 48. 12. Ed. 4. 6. B. Tort Dem. 57. 1. Sid. 246. Kely. 128. 2. R. Abr. 547. 1. Keb. 884. 921. 2. Inſt. 316. (*m*) 35. H. 6. 50, 51. 19. H. 6. 31. 66. 12. Ed. 4. 6. Crom. 136. Dalt. c. 72. 2. R. Abr. 546.

maſter;

master; especially if it appear that he did all he could to avoid fighting before he gave the wound; or if a (a) man fight with or beat one who attempts to kill any stranger; or if a man even (b) threaten to kill one who puts him in fear of death in such a place where he cannot safely fly from him; or if one (c) imprison those whom he sees fighting, till the heat is over.

(a) 12. H. 8. 2.
(b) 32. H. 6. 18. 10. Ed. 4. 6.
(c) 2. R. Abr. 559. 22. E. 4. 45.

Sect. 24. According to some opinions, a (d) master shall not forfeit such a recognizance for beating another in defence of his servant. But it is said, that a (e) servant is liable to such forfeiture for beating another in defence of his master's son, though he were commanded by the master so to do, because he is not a servant to the son; and for the like reason it is said, that a (f) tenant shall incur the like forfeiture for beating another in defence of his landlord, &c.

(d) 2. R. Ab. 546. 19. H. 6. 31. 66. Dalt. c. 72. Crom. 136. Con. 9. Ed. 4. 48. Salk. 407.
(e) 9. Ed. 4. 48. B. Trel. 189.
(f) Dalt. c. 72. Lamb. 129.

Sect. 25. But it seems agreed, that no one shall forfeit such a recognizance by a bare trespass on another's lands, or goods, unless it be accompanied with some violence to the person.

Crom. 136. Dalt. c. 72. C. Eliz. 86. Moor 249.

Sect. 26. And it seems to be the better opinion, that a man is in no danger of such a forfeiture from any hurt done to another by playing at cudgels, or such like sport, by consent, because the intent of the parties seems no way unlawful, but rather commendable, and tending mutually to promote activity and courage. Yet it is said, that he who wounds another in fighting with naked swords, does in strictness forfeit such a recognizance, because no consent can make so dangerous a diversion lawful.

Dalt. c. 22. B. Co. 229. F. Bar. 244.

Sect. 27. But it seemeth, that a man shall not forfeit such recognizance, by a hurt done to another merely through negligence, or mischance; as where one soldier hurts another by discharging a gun in exercise, without sufficient caution; for notwithstanding such person must, in a civil action, give the other satisfaction for the damage occasioned by his want of care, yet he seems not to have offended against the purport of such a recognizance, unless he be guilty of some wilful breach of the peace.

Hobart 134. 2. R. Abr. 548.

CHAP-

CHAPTER THE SIXTY-FIRST.

OF SURETY FOR THE GOOD BEHAVIOUR.

AND now we are come to SURETY *for the good behaviour*, which, being of great affinity with SURETY *of the peace*, both as to the manner in which it is to be taken, ſuperſeded, and diſcharged, &c. ſeems not to require a particular conſideration, ſave only as to the following points: 4. Com. 248. 251. 253.

1. For what miſbehaviours it is to be required.

2. For what it ſhall be forfeited.

As to THE FIRST POINT, *viz.* For what miſbehaviours ſurety is required.

Sect. 1. It is to be obſerved, that by 34. Edw. 3. c. 1. "Juſtices of peace are empowered to reſtrain offenders, "rioters, and all other barrators, and to purſue, arreſt, "take, and chaſtiſe them, according to their treſpaſs, or "offence; and to cauſe them to be impriſoned, and duly "puniſhed according to the laws and cuſtoms of the realm, "and according to that which to them ſhall ſeem beſt to "do by their diſcretions, and good adviſement; and alſo "to inform them, and to enquire of all thoſe who have "been pillors and robbers in the parts beyond the ſea, and "be now come again, and go wandering, and will not la-"bour as they were wont in times paſt, and to take and "arreſt all thoſe that they may find by indictment or by "ſuſpicion, and to put them in priſon, and to take of all "them that be not of good fame, where they ſhall be "found, ſufficient ſurety and mainprize of their good be-"haviour towards the king, and his people, and the other "duly to puniſh, to the intent that the people be not by "ſuch rioters troubled nor indamaged, nor the peace ble-"miſhed, nor merchants, nor others paſſing by the high-"ways of the realm diſturbed, nor put in the peril which "may happen of ſuch offenders." Vide Barlow, 524.

Sect. 2. In the conſtruction hereof there ſeem to have been ſome opinions, that the ſtatute, ſpeaking of thoſe that be not of good fame, means only ſuch as are defamed, and juſtly ſuſpected that they intend to break the peace, and that it does not any way extend to thoſe who are guilty of other 4. Inſt. 181. 2. H. 7. 2, 3. 13. H. 7. 10. Pulton 18.

other miſbehaviours not relating to the peace. But this ſeems much too narrow a conſtruction, ſince the abovementioned expreſſion of "perſons of evil fame," in common underſtanding, as properly includes perſons of ſcandalous behaviour in other reſpects, as thoſe who by their quarrelſome behaviour give juſt ſuſpicion of their readineſs to break the peace. And accordingly it ſeems to have been always the better opinion, that a man may be bound to his good behaviour for many cauſes of ſcandal which give him a bad fame, as being contrary to good manners only; as for (*a*) haunting bawdy-houſes with women of bad fame; or for (*b*) keeping bad women in his own houſe; or for ſpeaking words of contempt of an inferior (*c*) magiſtrate, as a juſtice of peace, or mayor of a town, &c. though he be not then in the actual execution of his office, or of an inferior officer of juſtice, as a conſtable, and ſuch like, being in the actual execution of his office.

4. Burn 270. Lamb. 115, 116, 117. Dalt. c. 75.

12. Mod. 566. (*a*) 13. H. 7. 10. (*b*) Crom. 140. (*c*) C. Eliz. 78. 1. Levin. 52, 53. 107. 11. Co. 98. 1. Roll. 224. Latch. 220. Con. C. Eliz. 589. 449.

Palmer 130. 1. Roll. 227, 228. 3. Bulſt. 139, 140. Cro. Car. 409.

Sect. 3. However, it ſeems the better opinion, that no one ought to be bound (*d*) to the good behaviour for any raſh, quarrelſome, or unmannerly words, unleſs they either directly tend to a breach of the peace, or to ſcandalize the government, by abuſing thoſe who are intruſted by it with the adminiſtration of juſtice, or to deter an officer from doing his duty; and therefore it ſeems, that he (*e*) who barely calls another rogue, or raſcal, or teller of lies, drunkard, &c. ought not, for ſuch cauſe, to be bound to the good behaviour.

(*d*) C. Car. 498, 499. (*e*) C. Eliz. 86. Moor 249. Sup. c. 60. ſ. 22. 2. Roll. 299. 227. Palmer 126.

Sect. 4. However, I cannot find any certain preciſe rules for the direction of the magiſtrate in this reſpect, and therefore am inclined to think, that he has a diſcretionary power to take ſuch ſurety of all thoſe whom he ſhall have juſt cauſe to ſuſpect to be dangerous, quarrelſome, or ſcandalous, as of thoſe who ſleep in the day, and go abroad in the night, and of ſuch as keep ſuſpicious company, and of ſuch as are generally ſuſpected to be robbers, &c. and of eve-droppers, and common drunkards, and all other perſons, whoſe miſbehaviour may reaſonably be intended to bring them within the meaning of the ſtatute, as perſons of evil fame, who, being deſcribed by an expreſſion of ſo great latitude, ſeem in a great meaſure to be left to the judgment of the magiſtrate. But if he commit one for want

Dalt. 75. 1. Roll. 150. 2. Ven. 22, 23, 24.

want of ſureties, he muſt ſhew the cauſe, &c. with convenient certainty (1).

(1) Security for good behaviour may be taken: For uſing opprobrious terms in a court of juſtice. 1. Lev. 107. Accuſing juſtices of ignorance in the exciſe laws. 1. Vent. 16. Publiſhing an obſcene book. Fort. 193. For exciting diſcontents in the minds of the people. 2. Vent. 24. For offering medicines to deſtroy a child in the womb. Cro. Eliz. 449. For obſtructing another on his neceſſary way to a court of juſtice. 2. Lill. Reg. 649. For diſturbing a licenſed preacher. 1. Mar. ſ. 2, 3. For unlawful fiſhing or hunting. 5. Eliz. c. 21. For neglecting church a month. 23. Eliz. c. 1. For hunting or ſtealing deer or conies. 1. Jac. 1. c. 15. ſed vide 16. Geo. 3. c. 30. And it is a uſual part of the judgment in a miſdemeanour. 4. Bac. Ab. 698. But a juſtice of a peace cannot compel the ſecurity upon a general information. Str. 16. And whether a perſon taken upon the warrant of a ſecretary of ſtate for a libel ſhall give ſecurity for his good behaviour, ſeems unſettled. 1. Wilſ. 29. ſed vide 2. Wilſ. 160. and for a very full account of this title, 4. Burn. 269. 283.

As to THE SECOND POINT, *viz.* For what miſbehaviours ſuch a recognizance ſhall be forfeited.

Sect. 5. It is laid down as a general rule in the argument of *Stamp* and *Hide's* caſe, that whatever will be a good cauſe to bind a man to his good behaviour, will forfeit a recognizance for it. Yet this is ſince denied in *Heyward's caſe*; and indeed does by no means ſeem to be maintainable, becauſe the ſtatute, in ordering perſons of evil fame to be bound in this manner, ſeems in many caſes chiefly to regard the prevention of that miſchief which they may juſtly be ſuſpected to be likely to do; and in that reſpect requires them to ſecure the publick from that danger which may probably be apprehended from their future behaviour, whether any actual crime can be proved upon them, or not; and it would be extremely hard in ſuch caſes to make perſons forfeit their recognizance, who yet may juſtly be compellable to give one, as thoſe who keep ſuſpicious company, or thoſe who ſpend much money idly, without having any viſible means of getting it honeſtly, or thoſe who lie under a general ſuſpicion of being rogues, &c.

Palm. 119. 130. C. Car. 499. 13. H. 7. 10. Dalt. c. 75.

Sect. 6. However, it ſeems that ſuch a recognizance ſhall not only be forfeited for ſuch actual breaches of the peace, for which a recognizance for the peace may be forfeited, but alſo for ſome others, for which ſuch a recognizance cannot be forfeited; as for going armed with great numbers to the terror of the people, or ſpeaking words tending to ſedition, &c. and alſo for all ſuch actual miſbehaviours which are intended to be prevented by ſuch a recognizance, but not for barely giving cauſe of ſuſpicion of what perhaps may never actually happen.

2. H. 7. 2. C. Eliz. 86. Moor 249. 2. Roll. 228. 150. 199. C. Car. 493. 2. Leo. 160. Godb. 622. 22. Lamb. 116. 118. C. Jac. 412.

It may bo diſcharged on motion on producing proſecutor's conſent, verified by affidavit. Hardwicke's Caſes, 158. Or conſenting by Counſel. 1. Burr. 703. Sed vide ch. 60. ſ. 17.

CHAP-

CHAPTER THE SIXTY-SECOND.

OF ASSAULTS AND BATTERIES.

AND now I am come to conſider the ſeveral kinds of actual diſturbances of the peace.

And theſe are, either, Such as may be committed by one or two perſons; or, Such as require a great number.

Thoſe which may be committed by one or two perſons, are, aſſaults and batteries; or affrays; or forcible entries and detainers.

As to ASSAULTS AND BATTERIES, I ſhall conſider the following particulars:

1. What ſhall be ſaid to be an aſſault.

2. What ſhall be ſaid to be a battery.

3. In what caſes aſſault and battery may be juſtified.

4. In what manner they are to be puniſhed.

As to THE FIRST POINT, *viz.* What ſhall be ſaid to be *an aſſault*.

Fulton 4. 6. Mod. 173, 174. 2. R. Abr. 545. 1. Vent. 256. 1. Mod. 3. 1. Keb. 921. 41. Ed. 3. 40. 42. Ed. 3. 7. 45. Ed. 3. 24, 25. 22. Aſſ. 60. 2. R. Abr. 545. 10. Mod. 187. 2. Keb. 545. Law of Evid. 235.

Sect. 1. It ſeems that an aſſault is an attempt, or offer, with force and violence, to do a corporal hurt to another; as by ſtriking at him with or without a weapon; or preſenting a gun at him at ſuch a diſtance to which the gun will carry; or pointing a pitch-fork at him, ſtanding within the reach of it; or by holding up one's fiſt at him; or by any other ſuch-like act done in an angry threatening manner: and from hence it clearly follows, that one charged with an aſſault and battery, may be found guilty of the former, and yet acquitted of the latter. But every battery includes an aſſault; therefore on an indictment of aſſault and battery, in which the aſſault is ill laid, if the defendant be found guilty of the battery, it is ſufficient. Notwithſtanding the many ancient opinions to the contrary, it ſeems agreed at this day, that no words whatſoever can amount to an aſſault.

As

As to THE SECOND POINT, *viz.* What ſhall be ſaid to be *a battery*.

Sect. 2. It ſeems that any injury whatſoever, be it never ſo ſmall, being actually done to the perſon of a man in an angry, revengeful, rude, or inſolent manner, as by ſpitting in his face, or any way touching him in anger, or violently joſtling him out of the way, are batteries in the eye of the law. But it is ſaid to be no battery to lay one's hand gently on another whom an officer has a warrant to arreſt, and to tell the officer that this is the man he wants. 22. Aſſ. 11. Pult. 3. Lamb. 126. Salk. 384. 6. Mod. 149. 172. 1. Mod. 3. 3. Lev. 404. Skin. 387. 2. R. Abr. 546.

As to THE THIRD POINT, *viz.* In what caſes an aſſault and battery may be juſtified.

Sect. 3. This is ſo fully ſet forth already in the chapter of *Surety of the Peace*, that there ſeems to be no need of any further conſideration thereof in this place; and therefore I ſhall only add, that where a man in his own defence beats another who firſt aſſaults him, &c. he may take an advantage thereof upon *an indictment*, as well as upon *an action*; but with this difference, that in the firſt caſe he may give it in evidence upon the plea of *not guilty*, and in the latter he muſt plead it ſpecially. 6. Mod. 172. 230. 263. 4. Comm. 145. 216. 11. Mod 43. 52. 2. Salk. 642. L. Ray. 177. 1. Sid. 246. Holt 699.

As to THE FOURTH POINT, *viz.* How unlawful aſſaults and batteries are puniſhed.

Sect. 4. There is no doubt but that the wrong doer is ſubject both to an action at the ſuit of the party, wherein he ſhall render damages, &c. and alſo to an indictment, at the ſuit of the king, wherein he ſhall be fined according to the heinouſneſs of the offence. 8. Mod. 283. 1. Bac. Abr. 156.

† *Sect.* 5. By 5. Hen. 4. c. 6. and 11. Hen. 6. c. 11. "To aſſault or affray any of the members of the houſe of "lords, or houſe of commons, or other council of the "king, or any of their ſervants, in their way to, or at- "tendance on parliament, is puniſhable, upon non-ſur- "render, or proclamation, with double damages, and fine "and ranſom at diſcretion." Form of indictment, Cro. Cir. 121.

† *Sect.* 6. By 9. Edw. 2. c. 3. "If any lay violent hands "on a clerk, he may be indicted before the king for the peace "broken; and ſued before the biſhop for the ſpiritual of- "fence." 4. Comm. 218. 2. Inſt. 492. 620.

† *Sect.* 7. By 5. Eliz. c. 4. ſ. 21. "If any ſervant aſ- "ſault or affray his maſter, miſtreſs, or overſeer, he ſhall

" ſuffer impriſonment, not exceeding a year, on conviction " before two juſtices of the county, or the chief magiſtrate " and two corporators of a town.—And if further puniſh- " ment ſhould appear neceſſary, the juſtices in ſeſſions, or " the head magiſtrate and four or ſix corporators in a town, " may exerciſe their diſcretion, ſo that the puniſhment ex- " tend not to life or limb."

Cro. Cir. 101. † *Sect.* 8. By 9. Ann. c. 16. " To aſſault and ſtrike " any privy councillor, in the council, or in any committee " thereof, in the execution of his duty, is death."

† *Sect.* 9. By 9. Ann. c. 14. ſ. 8. " To aſſault and beat " any other on account of money won by gaming, in the " manner deſcribed, is forfeiture of goods, and two years " impriſonment."

Vide O. B. 1761, No. 261. Cro. Cir. 122. † *Sect.* 10. By 6. Geo. 1. c. 23. ſ. 11. " To aſſault an- " other in the ſtreet, with intent to ſpoil their cloaths, is " tranſportation."

Ante p. 225. † *Sect.* 11. By 9. Geo. 1. c. 22. " To aſſault another " by wilfully ſhooting at him, is felony without clergy."

Ante p. 148. † *Sect.* 12. By 7. Geo. 2. c. 21. " To aſſault with in- " tent to rob, is tranſportation."

Ante p. 239. † *Sect.* 13. By 12. Geo. 1. c. 24. " To aſſault any " maſter woolcomber, or weaver, or other perſon concern- " ed in the woollen manufactory, whereby he ſhall receive " any bodily hurt, for not complying with any of the bye " laws which are mentioned in the act, or ſhall write or " ſend any threatening letter, &c. &c. is tranſportation for " ſeven years."

CHAP-

CHAPTER THE SIXTY-THIRD.

Of AFFRAYS.

IN treating of affrays, I ſhall conſider, 4. Comm. 145.

1. What ſhall be ſaid to be an affray.

2. How far it may be ſuppreſſed by a private perſon.

3. How far by a conſtable.

4. How far by a juſtice of peace.

5. In what manner the ſeveral kinds of affrays may be puniſhed.

As to THE FIRST POINT, *viz.* What ſhall be ſaid to be an affray.

Sect. 1. It is ſaid, that the word "*affray*" is derived from the *French* word *effraier*, to terrify, and that, in a legal ſenſe, it is taken for a publick offence to the terror of the people. From this definition it ſeems clearly to follow, that there may be *an aſſault* which will not amount to *an affray*; as where it happens in a private place, out of the hearing or ſeeing of any, except the parties concerned; in which caſe it cannot be ſaid to be to the terror of the people; and for this cauſe ſuch a private aſſault ſeems not to be inquirable in a court leet, as all affrays certainly are, as being common nuſances. 3. Inſt. 158. Dalt. c. 8. Lamb. 125, 126. 4. H. 6. 10. 8. Ed. 4. 5.

Sect. 2. Alſo it is ſaid, that no quarrelſome or threatening words whatſoever ſhall amount to an affray; and that no one can juſtify laying his hands on thoſe who ſhall barely quarrel with angry words, without coming to blows; yet it ſeemeth, that the conſtable may, at the requeſt of the party threatened, carry the perſon, who threatens to beat him, before a juſtice, in order to find ſureties. 23. Ed. 4. 45. Dalt. c. 8. Lamb. Conſtable, 14.

Sect. 3. Alſo it is certain, that it is a very high offence to challenge another, either by word or letter, to fight a duel, or to be the meſſenger of ſuch a challenge, or even barely to endeavour to provoke another to ſend a challenge, or to fight; as by diſperſing letters to that purpoſe, full of reflections, and inſinuating a deſire to fight, &c. Popham 158. 3. Inſt. 158. 1. Sid. 186. 1. Keb. 694. Hob. 120. 215. 2. R. Abr. 78. 1. Burr. 316. Carr & Hankey.

† By 9. Ann. c. 14. ſ. 8. "Whoever ſhall challenge or "provoke to fight any other perſon or perſons whatſoever, "upon account of any money won by gaming, playing, "or betting at any of the games mentioned in the act, "ſhall, on conviction by indictment, or information, for- "feit all their goods, chattels, and perſonal eſtate, and ſuf- "fer impriſonment without bail, in the county priſon for "two years."

Lamb. 126. 3. Inſt. 160. 76. 2. R. Abr. 78. Summary 137.

Sect. 4. But granting that no bare words, in the judgment of law, carry in them ſo much terror as to amount to an affray, yet it ſeems certain, that in ſome caſes there may be an affray where there is no actual violence; as where a man arms himſelf with dangerous and unuſual weapons, in ſuch a manner as will naturally cauſe a terror to the people, which is ſaid to have been always an offence at common law, and is ſtrictly prohibited by many ſtatutes.

By 2. Edw. 3. it is enacted, "That no man, great "nor ſmall, of what condition ſoever he be, except the "king's ſervants in his preſence, and his miniſters in ex- "ecuting of the king's precepts, or of their office, and ſuch "as be in their company aſſiſting them, and alſo upon a "cry made for arms to keep the peace, and the ſame in "ſuch places where ſuch acts happen, be ſo hardy to come "before the king's juſtices, or other of the king's miniſters "doing their office, with force and arms, nor bring no "force in affray of peace, nor to go nor ride armed by "night nor by day, in fairs, markets, nor in the preſence "of the juſtices or other miniſters, nor in no part elſe- "where, upon pain to forfeit their armour to the king, "and their bodies to priſon, at the king's pleaſure. And "that the king's juſtices in their preſence, ſheriffs, and "other miniſters in their bailiwicks, lords of franchiſes, "and their bailiffs in the ſame, and mayors and bailiffs of "cities and boroughs, within the ſame cities and boroughs, "and borough-holders, conſtables and wardens of the "peace within their wards, ſhall have power to execute "this act: and that the juſtices aſſigned, at their coming "down into the country, ſhall have power to enquire how "ſuch officers and lords have exerciſed their offices in this "caſe, and to puniſh them whom they find that have not "done that which pertained to their office;" and this ſtatute is farther enforced by 7. Rich. 2. c. 13. and 20. Rich. 2. c. 1.

And

And in the expoſition of it the following points have been holden:

Sect. 5. FIRST, That any juſtice of peace, or other perſon who is empowered to execute this ſtatute, may proceed thereon, either *ex officio*, or by force of a writ out of chancery, formed upon the ſtatute, and that if he find any perſon in arms contrary to the form of the ſtatute, he may ſeize the arms, and commit the offender to priſon; and that he ought alſo to make a record of his whole proceeding, and certify the ſame into the chancery, where he proceeds by force of the ſaid writ, or into the exchequer, where he proceeds *ex officio*. F. N. B. 249. 3. Inſt. 161. Dalt. c. 22. Lamb. 168, &c. Daliſ. 23. 2. Bulſ. 330.

Sect. 6. SECONDLY, That where a juſtice of peace, &c. proceeds upon the ſaid writ, he may not only impriſon thoſe whom he ſhall find offending againſt the ſtatute in his own view, but alſo thoſe who ſhall be found by an inqueſt taken before him, to have offended in ſuch manner in his abſence. And I do not ſee why he may not do the ſame where he proceeds *ex officio*; for ſeeing the ſaid writ hath no other foundation but the ſaid ſtatute, and is the moſt authentick explication thereof, it ſeemeth that the rules therein preſcribed ſhould be the beſt direction for all proceedings upon that ſtatute. C. Eliz. 294. Con. Lamb. 170.

Sect. 7. THIRDLY, That the under-ſheriff may execute the ſaid writ, being directed to the ſheriff, if it name him only by the name of his office, and not by his proper name, and do not expreſsly command him to act in his proper perſon. C. Eliz. 294.

Sect. 8. FOURTHLY, That a man cannot excuſe the wearing ſuch armour in publick, by alledging that ſuch a one threatened him, and that he wears it for the ſafety of his perſon from his aſſault. But it hath been reſolved, that no one ſhall incur the penalty of the ſaid ſtatute for aſſembling his neighbours and friends in his own houſe, againſt thoſe who threaten to do him any violence therein, becauſe a man's houſe is as his caſtle. 24. Ed. 3. 33. 21. H. 7. 39. 3. Inſt. 161. Com. 2. Roll. 73. 2. H. 7. 39.

Sect. 9. FIFTHLY, That no wearing of arms is within the meaning of this ſtatute, unleſs it be accompanied with ſuch circumſtances as are apt to terrify the people; from whence it ſeems clearly to follow, that perſons of quality are in no danger of offending againſt this ſtatute by wearing common weapons, or having their uſual number of attendants with them for their ornament or defence, in ſuch places, and upon ſuch occaſions, in which it is the com- 3. Mod. 117. 2. Bulſt. 330.

mon faſhion to make uſe of them, without cauſing the leaſt ſuſpicion of an intention to commit any act of violence or diſturbance of the peace. And from the ſame ground it
Crom. 64. alſo follows, that perſons armed with privy coats of mail, to the intent to defend themſelves againſt their adverſaries, are not within the meaning of this ſtatute, becauſe they do nothing *in terrorem populi*.

Pop. 121, 122. *Sect.* 10. SIXTHLY, That no perſon is within the intention of the ſaid ſtatute, who arms himſelf to ſuppreſs dangerous rioters, rebels, or enemies, and endeavours to ſuppreſs or reſiſt ſuch diſturbers of the peace or quiet of the realm; for perſons who ſo arm themſelves, ſeem to be exempted out of the general words of the ſaid ſtatute, by that part of the exception, in the beginning thereof, which ſeems to allow all perſons to arm themſelves, upon a cry made for arms, to keep the peace, in ſuch places where ſuch acts happen.

As to THE SECOND POINT, *viz.* How far an affray may be ſuppreſſed by a private perſon.

Lamb. 131. 3. Inſt. 158. 2. Inſt. 52. 22. E. 4. 44. Dalt. c. 8. Lamb. 131. Infra ſ. 17. *Sect.* 11. It ſeems agreed, that any one who ſees others fighting, may lawfully part them, and alſo ſtay them till the heat be over, and then deliver them to the conſtable, who may carry them before a juſtice of peace, in order to their finding ſureties for the peace. Alſo it is ſaid, that any private perſon may ſtop thoſe whom he ſhall ſee coming to join either party; and from hence it ſeems clearly to follow, that if a man receive a hurt from either party in thus endeavouring to preſerve the peace, he ſhall have his remedy by an action againſt him. Alſo upon the ſame ground it ſeems equally reaſonable, that if he unavoidably happen to hurt either party, in thus doing what the law both allows and commends, he may well juſtify it, inaſmuch as he is no way in fault; and the damage done to the other, was occaſioned by a laudable intention to do him a kindneſs.

3. Inſt. 138. Lamb. 131. Dalt. c. 8.

Lamb. 131. Dalt. c. 8. 3. Inſt. 158. B. F. Imp. 35. 44. 10. H. 7. 20. 2. Inſt. 52. *Sect.* 12. However it ſeems clear, that if either party be dangerouſly wounded in ſuch an affray, and a ſtander-by, endeavouring to arreſt the other, be not able to take him without hurting, or even wounding him, yet he is no way liable to be puniſhed for the ſame, inaſmuch as he is bound, under pain of fine and impriſonment, to arreſt ſuch an offender, and either detain him till it appear whether the party will live or die, or carry him before a juſtice of peace, by whom he either is to be bailed or committed, &c.

As

As to THE THIRD POINT, *viz.* How far an affray may be ſuppreſſed by a conſtable.

Sect. 13. It ſeems agreed, that a conſtable is not only impowered, as all private perſons are, to part an affray which happens in his preſence, but is alſo bound at his peril to uſe his beſt endeavours to this purpoſe; and not only to do his utmoſt himſelf, but alſo to demand the aſſiſtance of others, which if they refuſe to give him, they are puniſhable with fine and impriſonment. 3. Inſt. 158. Lamb. 132, 133. Dalt. c. 8. 3. H. 7. 10.

Sect. 14. And it is ſaid, that if a conſtable ſee perſons either actually engaged in an affray, as by ſtriking, or offering to ſtrike, or drawing their weapons, &c. or upon the very point of entering upon an affray, as where one ſhall threaten to kill, wound, or beat another, he may either carry the offender before a juſtice of the peace, to the end that ſuch juſtice may compel him to find ſureties for the peace, &c. or he may impriſon him of his own authority for a reaſonable time, till the heat ſhall be over, and alſo afterwards detain him till he find ſuch ſurety by obligation. But it ſeems, that he has no power to impriſon ſuch an offender in any other manner, or for any other purpoſe; for he cannot juſtify the committing an affrayer to gaol till he ſhall be puniſhed for his offence; and it is ſaid, that he ought not to lay hands on thoſe who barely contend with hot words, without any threats of perſonal hurt, and that all which he can do in ſuch a caſe, is to command them under pain of impriſonment to avoid fighting. Lamb. 132, 133. Dalt. c. 1. 8. B. Surety, 23. 36. C. Eliz. 375. 9. Ed. 4. 26. Moor 284. 3. H. 4. 9. 22. E. 4. 35. 10. Ed. 4. 18. 5. H. 7 6. Sav. 97, 98.

Sect. 15. But he is ſo far intruſted with a power over all actual affrays, that though he himſelf is a ſufferer by them, and therefore liable to be objected againſt, as likely to be partial in his own cauſe, yet he may ſuppreſs them; and therefore, if an aſſault be made upon him, he may not only defend himſelf, but alſo impriſon the offender, in the ſame manner as if he were no way a party. 5. H. 7. 6. 1. Roll. 238. 2. Bulſt. 329.

Sect. 16. And if an affray be in a houſe, the conſtable may break open the doors to preſerve the peace, and if affrayers fly to a houſe and he follow with freſh ſuit, he may break open the doors to take them. 13. Ed. 4. 9. 7. Ed. 3. 12. Dalt. c. 8. 67. Lamb. 133, 134.

Sect. 17. But it is ſaid, that a conſtable hath no power to arreſt a man for an affray done out of his own view, without a warrant from a juſtice of peace, unleſs a felony were done or likely to be done; for it is the proper buſineſs of a conſtable to preſerve the peace, not to puniſh the C. Eliz. 375. Owen 105.

breach of it; nor does it follow from his having power to compel thoſe to find ſureties who break the peace in his preſence, that he has the ſame power over thoſe who break it in his abſence, inaſmuch as in ſuch caſe it is moſt proper to be done by thoſe who may examine the whole circumſtances of the matter upon oath, which a conſtable cannot do; yet it is ſaid that he may carry thoſe before a juſtice of peace, who were arreſted by ſuch as were preſent at an affray, and delivered by them into his hands.

Lamb. 131.
Dalt. c. 8.

As to THE FOURTH POINT, *viz.* In what manner an affray may be ſuppreſſed by a juſtice of peace.

Summary 136.
Dalt. c. 8.
B. F. Imp. 6.
12. 33.
14. H. 8. 7.
Moor 468.

Sect. 18. There is no doubt but that he may and muſt do all ſuch things to that purpoſe, which a private man or conſtable are either enabled, or required by the law to do. But it is ſaid, that he cannot without a warrant authorize the arreſt of any perſon for an affray out of his view. Yet it ſeems clear, that in ſuch caſe he may make his warrant to bring the offender before him, in order to compel him to find ſureties for the peace.

See 38. Ed. 3. 6, 7.
22. Aſſ. 56.
5. Mod. 84.

Sect. 19. Alſo it ſeems, that a juſtice of peace has a greater power over one who has dangerouſly wounded another in an affray, than either a private perſon or a conſtable; for there does not ſeem to be any good authority, that theſe have any power at all to take ſureties of ſuch an offender; but it ſeems certain, that a juſtice of the peace has a diſcretionary power either to commit him, or to bail him, till the year and day be paſt; but it is ſaid, that he ought to be very cautious how he takes bail, if the wound be dangerous; for that if the party die, and the offender appear not, he is in danger of being ſeverely fined, if he ſhall appear, upon the whole circumſtances of the caſe, to have been too favourable.

Summary 36.
Dalt. c. 8.
Popham 153.

As to THE FIFTH POINT, *viz.* In what manner the ſeveral kinds of affrays are to be puniſhed.

Sect. 20. It ſufficiently appears from the foregoing part of this chapter, how ſuch affrays as are accompanied with force and arms, are to be dealt with upon the *ſtatute of Northampton*. And therefore I ſhall only examine in this place, what penalties other affrays are liable unto.

As to which it is to be obſerved, that all affrays in general are puniſhed by fine and impriſonment, the meaſure of which is to be regulated by the diſcretion of the judges according to the circumſtances of the caſe, which very much

Aleyn 9.

much vary the nature of this crime, and in ſome caſes make it ſo inconſiderable as ſcarce to deſerve to be taken notice of; and in others make it an offence of a very heinous nature.

As in the following inſtances: FIRST, In reſpect of the dangerous tendency thereof. SECONDLY, In reſpect of the perſons againſt whom it is committed. THIRDLY, In reſpect of the place wherein it happens.

Sect. 21. And FIRST, An affray may receive an aggravation from the dangerous tendency thereof; as where perſons coolly and deliberately engage in *a duel*, which cannot but be attended with the apparent danger of murder, and is not only an open defiance of the law, but carries with it a direct contempt of the juſtice of the nation, as putting men under a neceſſity of righting themſelves; upon which conſiderations, perſons convicted of barely ſending a challenge, have been adjudged to pay a fine of one hundred pounds, and to be impriſoned for one month without bail, and alſo to make a publick acknowledgment of their offence, and to be bound to their good behaviour.

Popham 153. 3. Inſt. 158. 1. Sid. 186. 1. Keb. 694. Moor 563.

Sect. 22. SECONDLY, An affray may receive an aggravation from the perſons againſt whom it is committed; as where the officers of juſtice are violently diſturbed in the due execution of their office, as by the reſcous of a perſon legally arreſted, or the bare attempt to make ſuch a reſcous; for all the miniſters of the law are under its more immediate protection.

Sect. 23. THIRDLY, An affray may receive a farther aggravation from the place wherein it is committed; and upon this reſpect all affrays in the king's court are ſo ſeverely puniſhed, as hath been ſhewn already in chapter 21. Upon the ſame account alſo, all affrays in a church or church-yard, have been always eſteemed very heinous offences, as being very great indignities to the Divine Majeſty, to whoſe worſhip and ſervice ſuch places are immediately dedicated. And upon this conſideration all irreverent behaviour in theſe places hath been eſteemed ſo criminal by the makers of our laws, that they have not only ſeverely puniſhed ſuch diſturbances in them which are puniſhable wherever they happen, as all actual affrays, &c. but alſo ſuch which if they happen elſewhere, are not puniſhable at all; as bare quarrelſome words, and even ſuch which would be commendable if done in another place; as arreſts by virtue of legal proceſs.

12. Co. 101. 1. Keb. 290. 491. 1. Mod. 186.

But,

But, for the better understanding hereof, I shall consider the several statutes made for this purpose.

The offence of making an affray in a church or church-yard.

Sect. 24. And first, it is enacted by 5. & 6. Edw. 6. c. 4. "That if any person whatsoever shall, by words only, quarrel, chide, or brawl, in any church or church-yard, that then it shall be lawful unto the ordinary of the place where the same offence shall be done, and proved by two lawful witnesses, to suspend every person so offending; that is to say, if he be a layman, *ab ingressu ecclesiæ*, and if he be a clerk, from the ministration of his office, for so long time as the same ordinary shall by his discretion think meet and convenient, according to the fault."

Sect. 25. And it is further enacted by the said statute, "That if any person shall smite or lay any violent hands upon any other, either in any church or church-yard, that then, *ipso facto*, every person so offending shall be deemed excommunicate, and be excluded from the fellowship and company of Christ's congregation."

Sect. 26. And it is also further enacted by the said statute, "That if any person shall maliciously strike any person with any weapon in any church or church-yard, or shall draw any weapon in any church or church-yard, to the intent to strike another with the same weapon, that then every person so offending, and thereof being convicted by verdict of twelve men, or by his own confession, or by two lawful witnesses, before the justices of assize, justices of *oyer* and *terminer*, or justices of peace in their sessions, by force of this act, shall be adjudged by the same justices before whom such person shall be convicted, to have one of his ears cut off, &c. and besides that every such to be, and stand *ipso facto* excommunicated, as aforesaid."

Sect. 27. And in the exposition hereof it hath been holden:

Dyer 275.
C. Jac. 462.
1. Ven. 146.
Lit. 149.
Hetl. 86.
C. Eliz. 919.
1. Burr. 240.
2. Ld. Ray. 850.
10. Mod. 65. 179.
1. Ventris 146.
B. R. H. 179. 680. 224.
B. Prohib. 14.

FIRST, That notwithstanding the words of the statute be expressed, that he who smites another in the church, &c. shall, *ipso facto*, be deemed excommunicate, yet there ought either to be a precedent conviction at law, which must be transmitted to the ordinary, or else the excommunication must be declared in the spiritual court upon a proper proof of the offence there; for it is implied in every penal law, that no one shall incur the penalty thereof, till he be found guilty upon a lawful trial. Also it must be intended in the construction of this statute, that the excommunication ought

ought to appear judicially, for otherwiſe there could be no abſolution.

Sect. 28. SECONDLY, That he who ſtrikes another in a church, &c. can no way excuſe himſelf, by ſhewing that the other aſſaulted him. C. Jac. 367. C. Car. 467. Noy 171. See Wynne's Eunomus, 3. vol. 46, 47.

Sect. 29. THIRDLY, That church-wardens, or perhaps private perſons, who whip boys for playing in the church, or pull off the hats of thoſe who obſtinately refuſe to take them off themſelves, or gently lay their hands on thoſe who diſturb the performance of any part of divine ſervice, and turn them out of the church, are not within the meaning of the ſtatute. 1. Saund. 13, 14. 1. Sid. 301. 3. Keb. 124. 1. Mod. 168.

This act contains three diſtinct clauſes levelled againſt three diſtinct offences in churches and church-yards. Firſt, quarrelling, chiding, or brawling by words only. Secondly, ſmiting or laying violent hands. Thirdly, Striking with a weapon; or drawing one with intent to ſtrike. The eccleſiaſtical court is not prohibited from proceeding upon the two firſt clauſes; but upon the third clauſe there muſt be a previous conviction tranſmitted to the ordinary, &c. If they proceed for damages on either clauſe, they ſhall be prohibite; the proceedings of the eccleſiaſtical court and the king's bench being *diverſo intuitu*, the one to puniſh, and the other to amend. 1. Burr. 243. Vide 11. Mod. 200. Cathedral churches and church-yards, which belong to them, are within this ſtatute. 1. Leon. 248.

Sect. 30. Alſo it is enacted by 1. Mary, ſeſſ. 2. c. 3. The offence of diſturbing divine worſhip. "That if any perſon or perſons, of their own power and "authority, ſhall willingly and of purpoſe by open and "overt word, fact, act, or deed, maliciouſly or contemptu- "ouſly moleſt, let, diſturb, vex or trouble, or by any "other unlawful ways and means, diſquiet, or miſuſe, any "preacher who ſhall be licenſed, allowed, or authorized "to preach by the Queen's highneſs, or by any archbiſhop, "or biſhop of this realm, or by any other lawful ordi- "nary, or by any of the univerſities of *Oxford* and *Cam- "bridge*, or otherwiſe lawfully authorized or charged, by "reaſon of his or their cure, benefice, or other ſpiritual "promotion or charge, in any of his, or their open ſer- "mon, &c. or if any perſon or perſons ſhall maliciouſly, "willingly, or of purpoſe, moleſt, let, diſturb, vex, diſ- "quiet, or otherwiſe trouble any parſon, vicar, pariſh- "prieſt, or curate, or any lawful prieſt, preparing, ſay- "ing, doing, ſinging, miniſtring or celebrating the maſs, "or other ſuch divine ſervice, ſacraments, or ſacramentals, "as was moſt commonly frequented and uſed in the laſt "year of the reign of the late ſovereign lord king Henry "the Eighth, or that at any time hereafter ſhould be al- "lowed, ſet forth, or authoriſed by the queen's majeſty; "or if any perſon or perſons ſhall unlawfully, contemptu- Sacrilegious affrays. "ouſly,

" ouſly, or maliciouſly, of their own power or authority, " pull down, deface, ſpoil, or otherwiſe break any altar " or altars, or any crucifix, or croſs, in any church, cha- " pel, or church-yard; every ſuch offender and offenders, " his or their aiders, procurers, or abettors, may be appre- " hended by any conſtable, or churchwarden of the place " where ſuch offence ſhall be committed, or by any other " officer or perſon then being preſent at the time of the ſaid " offence; and being ſo apprehended ſhall be brought be- " fore ſome juſtice of peace, by whom they ſhall be com- " mitted forthwith, and within ſix days the matter ſhall " be examined by the ſame, together with ſome other juſ- " tices; and on proof by two witneſſes, or confeſſion, " the offender ſhall be committed for three months, and " alſo till the next quarter ſeſſions, where, if they repent, " they ſhall be diſcharged upon giving ſureties for their " good behaviour for a year, and if they do not repent they " ſhall be committed till they do."

2. Jon. 159. Con. Aleyn 50. 2. Bulſt. 51.

Sect. 31. It hath been reſolved, that the diſturbance of a miniſter in ſaying the preſent common prayer is within this ſtatute; for the expreſs mention of ſuch divine ſervice as ſhould afterwards be authorized by *queen Mary*, doth implicitly include ſuch alſo as ſhould be authorized by her ſucceſſors; for ſince the king never dies, a prerogative given generally to one, goes of courſe to others.

The offence of diſturbing a diſſenting congregation.

Sect. 32. Alſo it is enacted by 1. Will. and Mary, c. 18. ſ. 19. " That if any perſon ſhall willingly and of purpoſe, " maliciouſly or contemptuouſly come into any cathedral " or pariſh-church, chapel, or other congregation per- " mitted by the ſaid act, and diſquiet or diſturb the ſame, " or miſuſe any preacher or teacher, ſuch perſons, upon " proof before any juſtice of peace, by two or more ſuf- " ficient witneſſes, ſhall find two ſureties to be bound by " recognizance in the penal ſum of fifty pounds, and on " default of ſuch ſureties ſhall be committed to priſon, " there to remain till the next general or quarter ſeſſions, " and upon conviction of the ſaid offence, at the ſaid ge- " neral or quarter ſeſſions, ſhall ſuffer the pain and penalty " of twenty pounds."

Offence of diſturbing Catholic congregations. Ante vol. i. page 62. ſ. 8.

† *Sect.* 33. By 31. Geo. 3. c. 32. ſ. 10. the ſame is enacted with reſpect to *Roman Catholicks* who ſhall conform to the directions of this ſtatute, which is particularly ſet forth in the former part of this work.

CHAP-

CHAPTER THE SIXTY-FOURTH.

OF

FORCIBLE ENTRIES

AND

DETAINERS.

IT ſeems that at the common law a man diſſeiſed of any lands, or tenements (if he could not prevail by fair means), might lawfully regain the poſſeſſion thereof by force, unleſs he were put to a neceſſity of bringing his action, by having neglected to re-enter in due time. Lamb. 135. Dalt. c. 76. Crom. 70.

Sect. 1. And it ſeems certain, that even at this day, he who is wrongfully diſpoſſeſſed of his goods, may juſtify the re-taking of them by force from the wrong-doer, if he refuſe to re-deliver them; for the violence which happens through the reſiſtance of the wrongful poſſeſſor, being originally owing to his own fault, gives him no juſt cauſe of complaint, inaſmuch as he might have prevented it by doing as he ought. Keilw. 92. Yelv. 172. C. Jac. 236. Sup.c.60.f.23. Co. Lit. 134. Hal.Anal.346. 3.Comm.4, 5.

Sect. 2. But this indulgence of the common law, in ſuffering perſons to regain the lands they were unlawfully deprived of, having been found by experience to be very prejudicial to the public peace, by giving an opportunity to powerful men, under the pretence of feigned titles, forcibly to eject their weaker neighbours, and alſo by force to retain their wrongful poſſeſſions; it was thought neceſſary by many ſevere laws to reſtrain all perſons from the uſe of ſuch violent methods of doing themſelves juſtice.

Sect. 3. However, even at this day, in an action of forcible entry grounded on thoſe laws, if the defendant make himſelf a title which is found for him, he ſhall be diſmiſſed without any enquiry concerning the force. For howſoever he may be puniſhable at the king's ſuit, for doing what is prohibited by ſtatute, as a contemner of the laws and diſturber of the peace, yet he ſhall not be liable to pay any damages for it to the plaintiff, whoſe injuſtice gave him the provocation in that manner to right himſelf (1). 17. H. 7. 17. 21. H. 6. 39. F. N. B. 249. B.Force, 5. 11. 29.

(1) An indictment will lie at common law for a forcible entry, though generally brought on the acts of parliament. 3. Burr. 1698. 1732. But it muſt ſhew upon the face of it ſufficient actual force. 3. Burr. 1702. Form of the indictment at common law, &c. Vide Crown Circuit, 255.

Sect.

Sect. 4. Since therefore offences of this nature are made ſuch, not by the common law but by ſtatute; I ſhall, for the better underſtanding thereof, conſider the ſeveral ſtatutes relating to this ſubject.

3. Inſt. 161. Crom. 162. Dalt. c. 80.

Sect. 5. And firſt, I find it agreed, that by 2. Edw. 3. which is commonly called the *ſtatute of Northampton*; if there be any uſe made of arms to ſtrike a terror into the perſons upon whom a forcible entry is made, any juſtice of peace or other officer, who is within the purview of that ſtatute, may both ſeize the arms for the king's uſe, and alſo impriſon the offenders, but not reſtore the party injured to his poſſeſſion; but the ſaid ſtatute having been fully ſet forth in the foregoing chapter, I ſhall proceed to thoſe ſtatutes which more directly relate to this matter.

Sect. 6. And firſt it is enacted by 5. Rich. 2. c. 7. in the following words: "And alſo the king defendeth, that none "from henceforth make any entry into any lands and tene-"ments, but in caſe where entry is given by the law; and "in ſuch caſe not with ſtrong hand, nor with multitude "of people, but only in peaceable and eaſy manner. "And if any man from henceforth do to the contrary, "and thereof be duly convict, he ſhall be puniſhed by "impriſonment of his body, and thereof ranſomed at the "king's will."

Sect. 7. But this ſtatute being found by experience not ſufficiently to have provided againſt the miſchief intended to be redreſſed by it, inaſmuch as it gave no ſpeedy remedy to the party injured againſt the wrong-doer, but left him to the common courſe of proceeding by way of indictment or action, and made no proviſion at all againſt forcible detainers, it was thought neceſſary to ſupply theſe defects by other additional laws.

And to this purpoſe it was further enacted by 15. Rich. 2. c. 2. "That the ſaid ſtatute and all others made againſt "forcible entries, &c. ſhall be fully executed: and farther, "that at all times that ſuch forcible entries ſhall be made, "and complaint thereof cometh to the juſtices of peace, or "to any of them, that the ſame juſtices or juſtice take "ſufficient power of the county, and go to the place where "the force is made; and if they find any that hold ſuch "place forcibly, after ſuch entry made, they ſhall be taken "and put in the next gaol, there to abide convict by the "record of the ſame juſtices or juſtice, until they have "made fine and ranſom to the king. And that all the "people of the county, as well the ſheriff as others, ſhall "be attendant upon the ſame juſtices, to go and aſſiſt the "ſame juſtices to arreſt ſuch offenders, upon pain of im-

"priſon-

" priſonment, and to make fine to the king; and in the " ſame manner it ſhall be done of them that make ſuch " forcible entries in benefices or offices of holy church."

Sect. 8. In the expoſition of this ſtatute it hath been holden, that one juſtice of peace may make a record of ſuch a forcible holding, and that ſuch record is not traverſable, becauſe the juſtice of peace in making thereof, acts not as a miniſter but as a judge. 8. Co. 121. Dalt. c. 22. Lamb. 151.

Alſo it hath (*a*) lately been ſolemnly reſolved in colonel *Leighton's Caſe*, that the ſame juſtice may aſſeſs the fine for this offence, either before the time of conviction, or after; but it is ſaid, that ſuch juſtice of peace hath no power to commit the offender to gaol, unleſs he do it immediately upon the fact, or unleſs the offender ſhall afterwards refuſe to find ſureties for his good behaviour. (*a*) B.R. Hill. 1708. Salkeld 353. Keilw. 41. 8. Crom. 195, 196. Dalt. c. 22. Moor 848. See Rex v. Elwell, Ld. Ray. 1515.

Hil. 1. Geo. 2. Stra. 794.

Alſo it was holden by the Court in *Leighton's Caſe* above-mentioned, that if a perſon, againſt whom a complaint ſhall be made as having been guilty of a forcible entry, ſhall either traverſe the entry or the force, or plead that he has been three years in poſſeſſion, the juſtice may ſummon a jury for the trial of ſuch traverſe, for it is impoſſible to determine it upon view; and if the juſtice have no power to try it, it would be eaſy for any one to elude the ſtatute by the tender of ſuch a traverſe, and therefore by a neceſſary conſtruction, the juſtice muſt needs have this power as incidental to what is expreſsly given him. Salkeld 353. 2. L. Ray 1514. 2. Strange 794. Bar. K. B. 30. 38, 39. Self. Caſ. 289.

Sect. 9. But this ſtatute being likewiſe very defective in many reſpects, as in not giving any remedy againſt thoſe who were guilty of a forcible detainer after a peaceful entry; nor even againſt thoſe who were guilty of both a forcible entry and a forcible detainer, if they were removed before the coming of a juſtice of peace; and in not giving the juſtices of the peace any power to reſtore the party injured by ſuch force to his poſſeſſion; and alſo in not fixing any pain on the ſheriff for not obeying the precepts of the juſtices in the execution of the ſaid ſtatutes; it was farther enacted by 8. Hen. 6. c. 9. " That from henceforth where " any doth make any forcible entry in lands and tene- " ments, or other poſſeſſions, or them hold forcibly, after " complaint thereof made within the ſame county where " ſuch entry is made, to the juſtices of the peace, or to " one of them, by the party grieved, that the juſtices or " juſtice ſo warned, within a convenient time, ſhall cauſe, " or one of them ſhall cauſe, the ſaid ſtatute to be duly " executed, and that at the coſts of the party ſo grieved."

Sect.

Sect. 10. And it is farther enacted by the ſaid ſtatute, "That though ſuch perſons making ſuch entries be preſent, "or elſe departed before the coming of the ſaid juſtices or "juſtice, notwithſtanding the ſame juſtices or juſtice in "ſome good town next to the tenements ſo entered, or in "ſome other convenient place according to their diſcretion, "ſhall have, and either of them ſhall have, authority and "power to enquire by the people of the ſame county, as "well of them that make ſuch forcible entries in lands and "tenements, as of them which the ſame hold with force. "And if it be found before any of them, that any doth "contrary to this ſtatute, then the ſaid juſtices or juſtice "ſhall cauſe to reſeize the lands and tenements ſo entered "or holden as afore, and ſhall put the party ſo put out, in "full poſſeſſion of the ſame lands and tenements, ſo en-"tered or holden as before."

Sect. 11. And it is further enacted by the ſaid ſtatute, "That when the ſaid juſtices or juſtice make ſuch enquiries "as before, they ſhall make, or one of them ſhall make, "their warrants and precepts to be directed to the ſheriff of "the ſame county, commanding him of the king's behalf, "to cauſe to come before them, and every of them, ſuf-"ficient and different perſons, dwelling next about the "lands ſo entered as before, to enquire of ſuch entries, "whereof every man which ſhall be impanelled to en-"quire into this behalf, ſhall have land or tenement of the "yearly value of forty ſhillings by the year, at the leaſt, "above reprizes, and that the ſheriff return iſſues upon "every of them at the day of the firſt precept returnable, "twenty ſhillings, and at the ſecond day forty ſhillings, "and at the third time an hundred ſhillings, and at every "day after the double. And if any ſheriff or bailiff within "a franchiſe having return of the king's writ, be ſlack, and "make not execution duly of the ſaid precepts to him di-"rected to make ſuch enquiries, that he ſhall forfeit to the "king twenty pounds for every default, and moreover ſhall "make fine and ranſom to the king. And that as well "the juſtices or juſtice aforeſaid, as the juſtices of aſſize "ſhall have power to hear and determine ſuch defaults of "the ſaid ſheriffs and bailiffs, at the ſuit of the king, or "of the party grieved, &c."

Sect. 12. And it is farther enacted by the ſaid ſtatute, "That mayors, juſtices or juſtice of peace, ſheriffs and bai-"liffs of cities, towns, and boroughs, having franchiſe, "have in the ſaid cities, towns and boroughs, like power "to remove ſuch entries, and in other articles aforeſaid, "riſing within the ſame, as the juſtices of peace, and ſheriffs "in counties and countries aforeſaid have."

Sect.

Sect. 13. But it is provided by the ſaid ſtatute, "That "they who keep their poſſeſſions with force in any lands "and tenements, whereof they or their anceſtors, or they "whoſe eſtate they have in ſuch lands and tenements, have "continued their poſſeſſions in the ſame by three years or "more, be not endamaged by force of this ſtatute."

Sect. 14. And the ſaid proviſo was farther enforced and explained by 31. Eliz. c. 11. by which it is declared and enacted, "That no reſtitution upon any indictment of for- "cible entry, or holding with force, be made to any per- "ſon, if the perſon ſo indicted hath had the occupation, or "been in quiet poſſeſſion, for the ſpace of three whole "years together, next before the day of ſuch indictment ſo "found, and his eſtate therein not ended; which the party "indicted may alledge for ſtay of reſtitution, and reſtitu- "tion to ſtay till that be tried, if the other will deny or "traverſe the ſame. And if the ſame allegation be tried "againſt the ſame perſon ſo indicted, he is to pay ſuch coſts "and damages to the other party, as ſhall be aſſeſſed by the "judges or juſtices before whom the ſame ſhall be tried; "the ſame coſts and damages to be recovered and levied, as "is uſual for coſts and damages contained in judgments "upon other actions."

Sect. 15. In the conſtruction of theſe ſtatutes it was holden, that if a leſſee for years, or copyholder be ouſted, and the leſſor, or lord, diſſeiſed, and ſuch ouſter, as well as diſſeiſin, be found in an indictment of forcible entry, the Court may in their diſcretion award a reſtitution of poſ- ſeſſion to ſuch leſſee or copyholder; which was, by neceſſary conſequence, a reſeiſin of the freehold alſo, whether the leſſor or lord had deſired or oppoſed it. But it was a great queſtion, whether a leſſee for years, or a copyholder, being ouſted by the leſſor or lord, could have a reſtitution of their poſſeſſion within the equity of 8. Hen. 6. the words whereof as to this purpoſe are, "that the juſtice ſhall re-ſeize the "lands, &c." by which it ſeems to be implied, that the party muſt be ouſted of ſuch an eſtate therein, whereof he may be ſaid to be ſeiſed, which muſt be a freehold at leaſt. Crom. 161, 166. Yelv. 81. Con. 1. Leon. 327. Lamb. 155. Crom. 71. Dalt. c. 77. Savil 68. Farreſl. 123.

Sect. 16. But to remove this doubt, it is enacted by 21. Jac. 1. c. 15. "That ſuch judges, juſtices, or juſtice of "the peace, as by reaſon of any act or acts of parliament "then in force, were authoriſed and enabled upon enquiry "to give reſtitution of poſſeſſion unto tenants of any eſtate "of freehold, of their lands or tenements, which ſhall be "entered upon with force, or from them withholden by

" force, ſhall by reaſon of that act, have the like and the " ſame authority and ability from thenceforth (upon in- " dictment of ſuch forcible entries, or forcible withholding " before them duly found) to give like reſtitution of poſ- " ſeſſion unto tenants for term of years, tenants by copy " of court-roll, guardians by knight's-ſervice, tenants by " *elegit*, ſtatute-merchant and ſtaple, of lands or tene- " ments, by them ſo holden, which ſhall be entered upon " by force, or holden from them by force."

Latch. 182. See Co. Lit. 61.

Sect. 17. But it hath been holden, that a tenant by the verge is not within this ſtatute, becauſe he is not within the expreſs words, *ſed quære*; for ſince ſuch perſon hath no other evidence of his title but by the copy of court-roll, he ſeems at leaſt to be within the meaning, if not within the words of the ſtatute. However it ſeems clear, that if a leſſor eject his leſſee for years, and afterwards be forcibly put out of poſſeſſion again by ſuch leſſee, he hath no remedy for a reſtitution by force, of any of the above-mentioned ſtatutes, for he cannot have it by 8. Hen. 6. becauſe he always continued ſeiſed of the freehold, and clearly he is not within 21. Jac. 1. c. 15.

Vide Salk. 587. Crom. 71. 166. Dalt. c. 77.

Lamb. 155. Crom. 71. Dalt. c. 75. 2. Keb. 495.

Sect. 18. However there ſeems to be no doubt but that a juſtice of peace, &c. may, in either of the ſaid caſes, remove the force, and commit the offender, &c.

Strange 443. 794. Ld. Ray. 1514.

Sect. 19. HAVING thus ſet forth the ſeveral ſtatutes relating to this ſubject, together with the miſchiefs which occaſioned them, and the ſeveral defects of each of them, I ſhall, for the better underſtanding of them all in general, proceed to examine the following particulars:

1. What ſhall be eſteemed an entry within theſe ſtatutes.

2. What entry is to be adjudged forcible.

3. What detainer ſhall be adjudged forcible.

4. In reſpect of what kind of poſſeſſions one may be guilty of ſuch forcible entry or detainer.

5. What perſons may be guilty thereof.

6. What ought to be the form of a record grounded upon theſe ſtatutes.

7. Of what kind of poſſeſſions a reſtitution is to be awarded.

8. To

8. To whom ſuch reſtitution ought to be made.

9. By whom, and in what manner, it is to be awarded and given.

10. In what caſes it may be barred by the continuance of a poſſeſſion for three years.

11. For what other cauſes it may be ſtayed.

12. How it may be ſuperſeded before it is executed.

13. How it may be ſet aſide after it is executed.

As to THE FIRST POINT, *viz.* What ſhall be eſteemed an entry within theſe ſtatutes.

Sect. 20. It ſeems certain, that if one who pretends a title to lands, barely go over them, either with or without a great number of attendants, armed or unarmed, in his way to the church, or market, or for ſuch like purpoſe, without doing any act, which either expreſsly or impliedly amounts to a claim of ſuch lands, he cannot be ſaid to make an entry thereinto within the meaning of theſe ſtatutes. Crom. 70. Dalt. c. 77.

Sect. 21. Yet in ſuch caſe, if he make an actual claim with any circumſtances of force or terror, he ſeems to be guilty of a forcible entry within 1. and 15. Rich 2. whether his adverſary actually quit his poſſeſſion or not. Crom. 69. Dalt. c. 77. Con. C. Car. 486. 2. Com. Dig. 363.

Sect. 22. Alſo all thoſe who accompany a man when he makes a forcible entry, ſhall be adjudged to enter with him, within the intent of theſe laws, whether they actually came upon the lands, or not. Crom. 69. Dalt. c. 77. B. 2. c. 29. ſ. 4.

Sect. 23. So alſo ſhall thoſe who having an eſtate in land by a defeaſible title, continue with force in the poſſeſſion thereof, after a claim made by one who had a right of entry thereto. Crom. 69. Dalt. c. 77. Co. Lit. 256.

Sect. 24. But he who barely agrees to a forcible entry made to his uſe, without his knowledge or privity, ſhall not be adjudged to make an entry within theſe ſtatutes, becauſe he no way concurred in or promoted the force. Crom. 69. Dalt. c. 77. 2. H. 7. 16.

As to THE SECOND POINT, *viz.* What entry is to be adjudged forcible.

Lamb. 140, &c. Dalt. c. 77. Co. Lit. 257. Hale 138. 1. Sid. 101. 1. Lev. 90.

Sect. 25. It ſeems clear that it ought to be accompanied with ſome circumſtances of actual violence or terror; and therefore that an entry which hath no other force than ſuch as is implied by the law in every treſpaſs whatſoever, is not within theſe ſtatutes.

And therefore, for the better underſtanding hereof, I ſhall conſider,

1. In reſpect of what acts of violence an entry may be adjudged forcible.

2. In reſpect of what circumſtances of terror.

As to the firſt of theſe particulars, *viz.* In reſpect of what acts of violence an entry may be adjudged forcible.

Sum. 116. 138. 2. Roll. 2. Noy 136, 137. (*a*) See Rex. *v.* Bathurſt, 3. Burr. 1732. (*b*) See Rex. *v.* Jobſon, 3. Burr. 1702. *notis.* 30. Aſſ. 50. 11. H. 4. 16, 17. 2. Inſt. 235, 236. Dalt. c. . Crom. 70. Moor 656. Lamb. 143.

Sect. 26. It ſeems to be agreed, that an entry may be ſaid to be forcible not only in reſpect of a violence actually done to the perſon of a man, as by beating him if he refuſe to relinquiſh his poſſeſſion, but alſo in reſpect of any other kind of violence in the manner of the entry, as by breaking open the doors of a houſe, whether any perſon be in it at the ſame time or not, eſpecially if it be a dwelling-houſe (*a*), and perhaps alſo by any act of outrage after the entry, as by carrying away the party's goods (*b*), &c. which being found in an *aſſiſe of novel diſſeiſin*, will make the defendant a diſſeiſor with force, and ſubject him to fine and impriſonment. And according to ſome opinions, an entry may be ſaid to be forcible from the bare drawing up of a latch, or pulling back the bolt of a door; but ſurely ſuch inconſiderable circumſtances as theſe, which commonly paſs between neighbour and neighbour, without any offence at all, can never bring a man within the meaning of theſe ſtatutes, which ſpeak of entries with ſtrong hand, or multitude of people: and it hath been holden, that an entry into a houſe through a window, or by opening a door with a key, is not forcible. And it is ſaid, that if one find a man out of his houſe, and forcibly withhold him from returning to it, and ſend perſons to take peaceable poſſeſſion thereof, in the party's abſence, yet he is not guilty of a forcible entry, inaſmuch as he did no violence to the houſe, but only to the perſon of the other. But perhaps this opinion may juſtly be queſtioned, becauſe though the force be not actually done upon the land, nor in the very act of the entry, yet ſince it is uſed with an immediate intent to make ſuch entry, and is the only cauſe it met with no oppoſition, ſurely it cannot be ſaid that the entry is without force, which,

which, whether it be upon or off the land, ſeems equally within the ſtatute.

As to the ſecond particular, *viz.* In reſpect of what circumſtances of terror an entry may be adjudged forcible.

Sect. 27. It is to be obſerved, that wherever a man, either by his behaviour or ſpeech, at the time of his entry, gives thoſe who are in poſſeſſion of the tenements which he claims, juſt cauſe to fear that he will do them ſome bodily hurt, if they will not give way to him, his entry is eſteemed forcible, whether he cauſe ſuch a terror by carrying with him ſuch an unuſual number of ſervants, or by arming himſelf in ſuch a manner, as plainly intimates a deſign to back his pretenſions by force, or by actually threatening to kill, maim, or beat thoſe who ſhall continue in poſſeſſion, or by giving out ſuch ſpeeches as plainly imply a purpoſe of uſing force againſt thoſe who ſhall make any reſiſtance; as if one ſay that he will keep his poſſeſſion in ſpite of all men, &c. Summary 128. Lamb. 142, &c. Dalt. c. 77. 10. H. 7. 12. Crom. 69. See the books above cited.

Sect. 28. But it ſeemeth that no entry ſhall be judged forcible from any threatening to ſpoil another's goods, or to deſtroy his cattle, or to do him any other ſuch like damage which is not perſonal. B. Dureſs 12 16. 1. Inſt. 253. Dalt. c. 77.

Sect. 29. However it is clear, that it may be committed by a ſingle perſon as well as by twenty. Lamb. 143.

As to THE THIRD POINT, *viz.* What detainer is to be adjudged forcible.

Sect. 30. It ſeemeth certain, that the ſame circumſtances of violence or terror, which will make an entry forcible, will make a detainer forcible alſo; from whence it ſeems to follow, that whoever keeps in his houſe an unuſual number of people, or unuſual weapons, or threatens to do ſome bodily hurt to the former poſſeſſor, if he dare return, ſhall be adjudged guilty of a forcible detainer, though no attempt be made to re-enter; and it hath been ſaid, that he alſo ſhall come under the like conſtruction, who places men at a diſtance from the houſe, in order to aſſault any one who ſhall attempt to make an entry into it; and that he alſo is in like manner guilty who ſhuts his doors againſt a juſtice of peace coming to view the force, and obſtinately refuſes to let him come in: but it is ſaid, that a man ought not to be adjudged guilty of this offence, for barely refuſing to go out of a houſe, and continuing therein in deſpite of another. Summary 138. Lamb. 145. Crom. 70. 73. Summary 139. Dalt. c. 77. C. Jac. 199.

As to THE FOURTH POINT, *viz.* In reſpect of what kind of poſſeſſions one may be guilty of a forcible entry or detainer within thoſe ſtatutes.

(*a*) 1. Sid. 101. 1. Lev. 90. 1. Keb. 438. (*b*) C. Jac. 41. (*c*) C. Car. 201. (*d*) 20. H. 6. 11. 22. H. 6. 33. B. Force 7. C. Car. 201. (*e*) C. Car. 201. (*f*) C. Car. 486. Dalt. c. 77. (*g*) C. Jac. 18. (*h*) Crom. 69. Lamb. 144. Dalt. c. 77. 1. Mod. 73. 2. Keb. 709.

Sect. 31. It ſeems clear, that one may come within the danger thereof by a force done to eccleſiaſtical poſſeſſions, as (*a*) churches, (*b*) vicarage-houſes, &c. as much as if the ſame were done to any temporal inheritance. Alſo it hath been holden for a general rule, that one may be indicted for a forcible entry into any ſuch incorporeal hereditament, for which a (*c*) writ of entry will lie, either by the common law, as for (*d*) rent, or by ſtatute, as for (*e*) tythes, &c. But I do not find any good authority, that ſuch an indictment will lie for a (*f*) common or (*g*) office; but it ſeems agreed, that an indictment of forcible detainer lies againſt any one, whether he be the terre-tenant or a ſtranger, who ſhall forcibly diſturb the lawful (*h*) proprietor, in the enjoyment of any of the above-mentioned poſſeſſions; as by violently reſiſting a lord in his diſtreſs for a rent, or by menacing a commoner with bodily hurt, if he dare put in his beaſts into the common, &c. Yet it ſeems clear, that no one can come within the danger of theſe ſtatutes by a violence offered to another in reſpect of a way, or ſuch like eaſement, which is no poſſeſſion. Alſo it ſeemeth, that a man cannot be convicted upon view, by force of 15. Rich. 2. of a forcible detainer of any ſuch tenement, wherein he cannot be ſaid to have made a precedent forcible entry, becauſe that ſtatute gives the juſtices a juriſdiction of no other forcible detainer, but what follows a forcible entry.

Vide inf. f. 40.

As to THE FIFTH POINT, *viz.* Who may be guilty of a forcible entry or detainer within theſe ſtatutes.

Moor 786. C. Jac. 18. 2. Keb. 495.

Sect. 32. It ſeems clear, that no one can come within the intention thereof by any force whatſoever done by him in entering into a tenement, whereof he himſelf had the ſole and lawful poſſeſſion, both at and before the time of ſuch entry; as by breaking open the door of his own dwelling-houſe, or of a caſtle, which is his own inheritance, but forcibly detained from him by one who claims the bare cuſtody of it; or by forcibly entering into the land in the poſſeſſion of his own leſſee at will. *Sed quære.*

8. Ed. 4. 9. 19. 10. H. 7. 27. King *v.* Marrow, 9. Geo. 2. B. R. H. 174.

Sect. 33. But it ſeems clear, that a joint-tenant, or tenant in common, may offend againſt the purport of theſe ſtatutes, either by forcibly ejecting, or forcibly holding out his companion; for though the entry of ſuch a tenant be lawful *per my et per tout*, ſo that he cannot in any caſe be puniſhed

puniſhed in an action of treſpaſs at the common law, yet the lawfulneſs of his entry no way excuſes the violence, or leſſens the injury done to his companion, and conſequently an indictment of forcible entry into a moiety of a manor, &c. is good. Latch. 224. Palmer 419.

Sect. 34. Alſo if a man have been in poſſeſſion of land for never ſo long a time, by a defeaſible title, and another who hath a right of entry thereunto, make a claim, and yet ſuch wrongful poſſeſſor ſtill continue his occupation with force and arms, he is puniſhable for a forcible entry and detainer againſt the purport of theſe ſtatutes, becauſe all the eſtate whereof he was ſeiſed before ſuch claim was wholly defeated by it, and his continuance in poſſeſſion afterwards amounted in the judgment of law to a new entry. Co. Lit. 256, 257. Crom. 69. Lamb. 160, 161. Dalt. c. 77.

Sect. 35. It is ſaid, that an *infant* or *feme covert* may be guilty within the intention of theſe ſtatutes, in reſpect of ſuch actual violence as ſhall be done by them in perſon, but not in reſpect of what ſhall be done by others at their command, becauſe all ſuch commands of theirs are void: alſo it is ſaid, that a *feme covert* may be impriſoned for ſuch offence, but that an infant ought not, becauſe he ſhall not be ſubject to corporal puniſhment by force of the general words of any ſtatute wherein he is not expreſsly named. Dalt. c. 77. Crom. 69. Co. Lit. 357. 1. Hale 21. B. Imp. 43. 45.

As to THE SIXTH POINT, *viz.* What ought to be the form of a record grounded upon theſe ſtatutes: it hath been reſolved,

Sect. 36. FIRST, That it is ſufficient in the caption of ſuch an indictment to ſay, that it was taken before *A. B.* and *C. D. juſticiariis ad pacem domini regis conſervandam aſſignatis*, without ſhewing that they had authority to hear and determine felonies and treſpaſſes; for the ſtatute enables all juſtices of peace, as ſuch, to take ſuch indictments. Palmer 277. C. Jac. 633.

Sect. 37. SECONDLY, It hath alſo been reſolved, that the tenement in which the force was committed muſt be deſcribed with convenient certainty, for otherwiſe the defendant will neither know the ſpecial charge to which he is to make his defence, neither will the juſtices or ſheriff know how to reſtore the injured party to his poſſeſſion; and from hence it follows, that an indictment of a forcible entry into a (*a*) tenement (which may ſignify any thing whatſoever), (*b*) wherein a man may have an eſtate of freehold, or into a houſe (*c*) or tenement, or into two cloſes of meadow (*d*) Dalt. c. 81. 8. Mod. 66. 12. Mod. 417. 3. Burr. 1732. (*a*) Dalt. 15. 2. Roll. 46. 2. R. Abr. 80. 3. Leon. 102. (*b*) Co. Lit. 6. (*c*) 2. R. Abr. 40. 1. Roll. 334. (*d*) 2. R. Abr. 81. C. Jac. 633. Palmer 277.

(a) 1. Bulſt. 201. (b) 2. Leon. 186. 3. Leon. 102. B. Forc. Ent. 23. (c) 2. Leon. 186. (d) 2. R. Abr. 80. Vide Stra. 474. (e) C. Jac. 633. Palmer 277. (f) C. Eliz. 458. 2. R. Abr. 80. 2. Leon. 186. 3. Leon. 102.

or paſture, or into a rood (a) or half a rood of land, or into (b) certain lands belonging to ſuch a houſe, or into ſuch a houſe, without ſhewing in what (c) town it lies, or into a (d) tenement with the appurtenances called *Truepenny* in *D.* is not good.

But it hath been reſolved, that an indictment for a forcible entry *in* (e) *domum manſionalem, ſive meſſuagium, &c.* is good, for theſe are words equipollent: alſo that ſuch an indictment for an entry into a (f) cloſe, called *Serjeant Hern's cloſe, &c.* without adding the number of acres, is good, for here is as much certainty as is required in an ejectment. And it hath been adjudged, that ſuch indictment may be void as to ſuch part thereof only which is uncertain, and good for ſo much as is certain, and therefore that an indictment for a forcible entry into a houſe, and certain acres of land thereto belonging, may be quaſhed as to the land, and ſtand good as to the houſe.

St. 21. Jac. 1. 2. Keb. 495. 3. Bulſt. 71. 1. Ven. 23. 25. 1. Sid. 102. 306. 11. Mod. 273. 1. Ven. 89. 2. Keb. 495. Salk. 260. Sayer 142. 225. Hetley 73. Latch. 109. 2. Keb. 477. 499. Lut. 1548. 1. Keb. 191. C. Eliz. 754. Noy 131. 2. Roll. 65. 1. Sid. 102. Con. Yelv. 28. 1. Bulſt. 177. Show. 272. Con. 1. Ven. 306. 3. Leon. 102. Allen 49. Palmer 277. 426. Con. 2. R. A. 80. Cro. Jac. 214. 633. 939.

Sect. 38. THIRDLY, It hath been alſo reſolved, that an indictment on 5. or 15. Rich. 2. needs not ſhew who had the freehold at the time of the force, becauſe thoſe ſtatutes ſeem equally to puniſh all force of this kind, without any way regarding what eſtate the party had on whom it was made; yet it ſeems, that ſuch an indictment ought to ſhew that ſuch entry was made on *the poſſeſſion* of ſome perſon who had ſome eſtate in the tenements, either as a freeholder or leſſee for years, &c. for otherwiſe it doth not appear that ſuch entry was made injurious to any one. But it is ſaid, that an indictment on 8. Hen. 6. muſt ſhew, that the place wherein the force was committed was the freehold of the party grieved at the time of ſuch force; and therefore, that it is not ſufficient to ſay that the defendant with ſtrong hand, &c. entered into ſuch a houſe, *exiſtens liberum tenementum J. S. &c.* without ſaying, *adtunc exiſtens liberum tenementum J. S.* for otherwiſe it may be intended, that it was his freehold at the time of the indictment only, and not at the time of the force; and according to the general opinion, an indictment on that ſtatute cannot warrant an award of reſtitution, unleſs it find that the party was ſeiſed at the time.

Yet it is ſaid, that the want of ſuch an expreſs finding may be ſupplied by ſuch words as neceſſarily imply, that the party was ſeiſed at the time of the force; as where it is expreſsly laid that the defendant diſſeiſed *J. S.* &c. which is impoſſible, unleſs he had been ſeiſed of the freehold at the ſame time; and it hath been ſaid, that it is ſufficient in ſuch an indictment to ſay that the party was *poſſeſſionatus pro termino vitæ*, without uſing the word *ſeiſitus, &c.* for the ſame propriety

propriety of expreſſion is not required in indictments as pleadings; *ſed quære.*

Alſo it is ſaid, that if it do appear either in ſuch an expreſs or implicit manner, that the party injured had the freehold of the land at the time of the force, it is not neceſſary to ſhew farther what eſtate in particular he had therein, or by what title he claims the ſame; for it is not *the title* but *the poſſeſſion* which is in queſtion.

And upon the like ground it hath been adjudged, that an indictment on the ſaid ſtatute for entering on my farmer, and forcibly expelling him, and diſſeiſing me, is good, without ſhewing what eſtate ſuch farmer had; for it is ſufficient to ſhew that he had *the poſſeſſion*, and the injury complained of is the forcible diſſeiſin done to me, which, being the main point of the indictment, if it be ſufficiently ſet forth in ſubſtance, the indictment is good: yet in this very caſe the want of ſhewing that ſuch farmer was ouſted, would have been an incurable fault; becauſe his poſſeſſion being my poſſeſſion, unleſs he were ouſted, I could not be diſſeiſed. 2. R. Abr. 80. Yelv. 165.

Alſo it hath been holden, that as an indictment on 8. Hen. 6. muſt ſhew that the party who is put out of poſſeſſion was ſeiſed of a freehold, in order to bring him within the purview of that ſtatute, ſo alſo an indictment on 21. Jac. 1. c. 15. muſt ſhew, that the party injured was poſſeſſed of ſuch an eſtate as will bring him within the proviſion of that act; and upon this ground it hath been reſolved, that ſuch an indictment, ſetting forth in general, that the party was *poſſeſſed*, or that he was poſſeſſed *for a certain term*, without adding that it was *for years*, is not good: for in the firſt caſe it may be intended, that he was poſſeſſed only by virtue of a leaſe *at will*; and in the ſecond, that he was poſſeſſed of a term *for life*; in neither of which caſes he is within the benefit of 21. Jac. 1. c. 15. Yet it hath been ſaid, that the poſſeſſion of ſuch an eſtate as is within that ſtatute, is ſufficiently ſet forth in the reciting part of an indictment, as thus, *quod cum J. S.* was poſſeſſed for a certain term of years, and being ſo poſſeſſed, was by ſtrong hand, &c. put out of poſſeſſion, &c. without any direct allegation of ſuch a poſſeſſion. Farreſl. 123. 1. Ven. 306. 1. Sid. 102. 1. Mod. 73. 2. Keb. 709. Salk. 260. Farreſl. 123. 1. Mod. 73.

Sect. 39. FOURTHLY, It hath been reſolved, that a repugnancy in ſetting forth the offence in an indictment upon any of theſe ſtatutes, is an incurable fault; and upon this foundation it hath been adjudged, that an indictment on 8. Hen. 6. ſetting forth, that the defendants *pacificè intraverunt*,

Aleyn 50. Show. 272. 1. Vent. 108. Popham 205. Raymond 67. 1. Keb. 423. 428. 435. 472.

verunt, &c. et eum adtunc et ibidem vi et armis diſſeiſiverunt, or that *J. S* was ſeiſed and poſſeſſed, is void. And it hath alſo been adjudged, that an indictment on 21. Jac. 1. ſetting forth, that the party injured was poſſeſſed of a term for years, or of a copyhold eſtate, and that the defendants with ſtrong hand ouſted and diſſeiſed him, is void, becauſe it is abſurd and contradictory to ſet forth a diſſeiſin of ſuch an eſtate whereof it is impoſſible that any man can be diſſeiſed. Alſo it hath been holden, that an indictment on 8. Hen. 6. ſetting forth a diſſeiſin of land, *adtunc et adhuc exiſtens liberum tenementum J. S.* is void for its repugnancy, inaſmuch as it implies, that *J. S.* always continued in poſſeſſion, which, if it be true, makes it impoſſible that he could be diſſeiſed at all; but ſome have ſaid that this ſeeming repugnancy may be reconciled, by intending that the diſſeiſee might re-enter after the time of the diſſeiſin, and before the finding of the indictment. However it ſeems clear, that if the words *adhuc extratenet* be added, ſuch a repugnancy cannot be helped by any intendment; and that no reſtitution can be awarded on ſuch an indictment, whether thoſe words *adhuc extratenet* be in it or not, becauſe the party grieved appears by the indictment itſelf to have had the freehold at the time of the finding thereof.

2. Roll. 311. Show. 272. 2. Bulſt. 121. 1. Sid. 102.

2. R. Abr. 80.

Sect. 40. FIFTHLY, It hath been reſolved, that an indictment of a forcible detainer, without ſhewing that the defendant made an entry into the ſame lands, is not good, becauſe the ſtatute doth not prohibit one who hath always been in poſſeſſion, to maintain the ſame with force. And it ſeems clear, that a conviction of a forcible detainer upon view, by force of 15. Rich. 2. cannot be good, unleſs it ſhew that the defendant was alſo guilty of a forcible entry; for the words of that ſtatute are, "that at all times that ſuch "forcible entries are made, and complaint thereof cometh "to the juſtices, &c. that the ſame juſtices, &c. ſhall go, &c. "and if they find any that hold ſuch place forcibly, after "ſuch entry made, &c." by which it is plain, that the juſtices have no juriſdiction by force of this ſtatute, but where the entry, as well as detainer, was forcible. Yet in *Leighton's caſe* it was reſolved, that ſuch a forcible entry is ſufficiently ſet forth in the complaint recited in ſuch conviction; and it is plain, that the ſtatute could not intend that the forcible entry ſhould be viewed, becauſe it is to precede the proceedings of the juſtices: but perhaps it is the better opinion, that an indictment upon 8. Hen. 6. ſetting forth an entry and forcible detainer, without ſhewing whether the entry were forcible or peaceable, is good; for there is no *medium* between a forcible and peaceable entry; and an entry not alledged to have been forcible, ſhall be intended

Palm. 195, 196, 197. C. Jac. 19, 20. Yelv. 32. C. Eliz. 915.

B. R. Hill. 1708.

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to have been peaceable; or if not ſo, yet it ſeems to be no way material, whether it ſhall be taken to have been forcible or peaceable, becauſe in either caſe it is equally within the ſtatute, the words whereof as to this purpoſe are, "Where any doth make forcible entry in lands and tene- "ments, or other poſſeſſions, or them hold forcibly;" by which it appears, that a forcible detainer is a diſtinct offence from that of a forcible entry, and no way depending on it; and my lord *chief juſtice* HOLT ſeemed to be of this opinion in *Leighton's caſe* abovementioned. However it ſeems to be certain, that if a bill both for a forcible entry and forcible detainer be preferred to a grand jury, and found *ignoramus* as to the entry with force, and *billa vera* as to the detainer, it will not warrant an award of reſtitution, but is void, becauſe the grand jury cannot find a bill true for part, (*a*) and falſe for part, as a petit jury may.

2. R. Abr. 80. Yelv. 99. C. Jac. 151. 1. Sid. 97. 99. 414. 2. Keb. 505. Vide inf. ſ. 59. B. 2. c. 25. ſ. 2.

(*a*) Vide Rex v. Fieldhouſe, Cowper 325.

Sect. 41. SIXTHLY, It hath been reſolved, that no indictment can warrant an award of reſtitution, unleſs it find that the wrong-doer both ouſted the party grieved, and alſo continueth his poſſeſſion at the time of the finding of the indictment; for it is a repugnancy to award reſtitution of poſſeſſion to one who never was in poſſeſſion, and it is vain to award it to one who doth not appear to have loſt it.

Salk. 260. B. Force 13. Lamb. 153. Dalt. c. 81. Summary 140. Hard. Ca. 174. Savil 68. Strange 474.

Sect. 42. SEVENTHLY, It hath been reſolved, that the time and place of the diſſeiſin are ſufficiently ſet forth in an indictment, alledging, that the defendant *tali die intravit, &c. et ipſum A. B. manu forti diſſeiſivit*, without adding the words *adtunc et ibidem*; for inaſmuch as the entry and diſſeiſin are both of them of the ſame nature, and the one of them naturally tends to cauſe the other, it is implied, that they both happened at the ſame time; and the forcible entry being the principal offence within the purview of theſe ſtatutes, and the diſſeiſin being only added to ſhew that the party grieved hath a right to a reſtitution, as to which the day of the diſſeiſin is no way material, it ſeemeth to be over-nice to require a preciſe exactneſs in ſetting it forth; neither can it be to any purpoſe to alledge that the diſſeiſin was at the ſame place with the entry, ſince it appears from the nature of the thing that it could not but be ſo. Yet in an indictment of murder it is perhaps a fatal miſtake, not expreſsly to ſhew the day and place of the ſtroke, as well as of the aſſault, becauſe theſe offences are of different kinds, the one being only a treſpaſs, and the other a felony, and may well be intended to have happened at different times and places; and the giving of the ſtroke being

C. Jac. 41. 151. B. 2. c. 23. ſ. 88. Dyer 68.

being the principal offence, ought to be ſet forth with the moſt exact certainty.

Sayer 225. (a) Noy 125. (b) C. Jac. 32. (c) C. Eliz. 86. Con. Noy 120.

Sect. 43. EIGHTHLY, It hath been reſolved, that a diſſeiſin is ſufficiently ſet forth, by alledging, that the defendant entered, &c. into ſuch a tenement and diſſeiſed the party, without adding either the words (*a*) *illicitè*, or (*b*) *expulit*, (*c*) *inde*, for the word *diſſeiſivit* implies as much.

11. Mod. 235. C. Eliz. 461. Latch. 224. 2. Bulſ. 258. B. 2. c. 25. ſ. 92. Con. 1. Keb. 572. 2. Keb. 133. 135. 1. Vent. 265. 3. Burr. 1732. 3. Burr. 1699. 7. Ed. 4. 18. Dalt. 25.

Sect. 44. NINTHLY, It hath been reſolved, that an indictment which purſues the words of the ſtatute in alledging an entry, &c. to have been made *manu forti*, need not expreſsly alſo to ſay, that it was made *vi et armis*, becauſe that is implied. Alſo it is ſaid, that as the want of thoſe words will not vitiate an indictment which purſues the ſtatute, ſo neither will the uſing of them make good an indictment which does not purſue it; yet it hath been reſolved, that ſuch an indictment may be good without mentioning any complaint, though the ſtatute ſeems to require it; for it is ſaid, that thoſe words in the ſtatute are put in *cauſâ abundanti*; and that if a juſtice of peace have by any means whatſoever notice of a forcible entry or detainer, he may and ought to proceed againſt the ſame according to the ſaid ſtatute, as being a diſturbance of the publick peace, the preſervation whereof was the chief end of theſe ſtatutes.

AS TO THE SEVENTH POINT, *viz.* Of what kind of poſſeſſions a reſtitution is to be awarded.

Dalt. c. 81. Lamb. 153. Co. Lit. 323. See Cruiſe on Fines 248.

Sect. 45. It ſeems, that it ought only to be awarded for the poſſeſſion of ſuch tenements as are viſible and corporeal; for no one who hath a right to ſuch as are inviſible and incorporeal, as rents, commons, &c. can be put out of poſſeſſion thereof, but only at his own election, by a fiction of law, in order to enable him to recover damages againſt the perſon who hath wrongfully diſturbed him in the enjoyment of them; for ſuch things being mere creatures of the law, and depending entirely upon the conſtruction thereof, are always in the poſſeſſion of thoſe whom the law adjudges to have a right to ſuch poſſeſſion; and conſequently all the remedy that can be deſired againſt a force offered to a man in reſpect of ſuch like poſſeſſions, is to have the actual force removed, and the offenders puniſhed for the ſame, which may be done by the force of 15. Rich. 2. &c.

As

As to THE EIGHTH POINT, *viz.* To whom ſuch reſtitution ought to be made.

Sect. 46. It hath been holden, that it ſhall only be given to him who is found by the indictment to have been put out of an actual poſſeſſion, and conſequently that it ſhall not be awarded to one who was only ſeiſed in law, as to an heir upon whom a ſtranger abateth upon the death of the anceſtor, before any actual entry made by ſuch heir; and from the ſame ground it followeth, that it ſhall not be granted to an heir upon an indictment, finding a forcible entry made upon his anceſtor. Dalt. c. 83. Lamb. 153. Lamb. 154. Dalt. c. 83. Vide C. Jac. 199.

Sect. 47. It hath been holden by ſome, that if a diſſeiſee re-enter peaceably upon the diſſeiſor, and continue for ſome time peaceably upon the tenements in diſpute, and afterward detain them with force, the diſſeiſor ſhall not be reſtored upon an indictment finding the ſaid force, becauſe his poſſeſſion was at firſt peaceably defeated, and at the time of the force, he had, in the judgment of law, no poſſeſſion at all. But I cannot be perſuaded that this opinion is agreeable to the intention of the ſaid ſtatutes, the principal end whereof ſeems to be to oblige all perſons to refer themſelves to the courts of juſtice for the deciſion of their claims to the poſſeſſion of land, and to reſtrain them from diſturbing the public peace by ſuch endeavours to right themſelves; but if ſuch a practice as this ſhould be allowed, it would be eaſy to evade the effect thereof by refraining from violence at firſt, and then forcing the party to leave the poſſeſſion of the premiſes after a ſhort continuance thereon in peace; neither do I ſee any difference between ſuch a continuance for the ſpace of three days, and a continuance for three hours or minutes, inaſmuch as the ſubſequent force is in each caſe equally within the miſchief intended to be provided againſt by the ſtatutes; and ſeeing the ſtatutes of 8. Hen. 6. and 31. Eliz. c. 11. have expreſsly provided, that thoſe who have been in poſſeſſion for three years, ſhall not be put out of poſſeſſion by an indictment of forcible entry or detainer, it ſeems plainly to be implied, that no one ſhall have the like advantage in reſpect of a poſſeſſion for a ſhorter time. Crom. 162, 163.

Sect. 48. It will be needleſs in this place to ſhew of what kind of hereditaments, or of what kind of eſtate therein, the party who is to be reſtored muſt be found to have been ſeiſed or poſſeſſed, becauſe this may ſufficiently appear by what hath been ſaid in the foregoing part of this chapter.

As

As to THE NINTH POINT, *viz.* By whom and in what manner ſuch reſtitution may be awarded and given.

Comyns 61. Dalt. c. 82. Dyer 187. 11. Mod. 495.

Sect. 49. There is no doubt but that the ſame juſtice, before whom an indictment of forcible entry or detainer ſhall be found, may grant an award of reſtitution to the party; and it is ſaid, that he may execute the ſame either in his own proper perſon, or make his precept to the ſheriff to do it.

1. Sid. 156. 1. Keb. 88. 1. Ven. 308. Dyer 187. Dalt. c. 82. Lamb. 184. (2) Vide 3. Com. Dig. 366. where it is ſaid that a juſtice of peace or ſheriff may break open a houſe to make reſtitution.

Sect. 50. But it ſeems clear, that neither juſtices of peace, nor any other court whatſoever, have authority to grant a reſtitution upon a conviction of any force taken by them upon view, unleſs the ſame be found by an indictment, according to the direction of 8. Hen. 6. c. 9. or 21. Jac. 1. c. 15. (2) Alſo it ſeems to be agreed, that no other juſtices of peace, except thoſe before whom ſuch an indictment ſhall be found, have any power, either at ſeſſions or out of it, to make any award of reſtitution; and that no other court whatſoever can perſonally reſtore the party without a precept to the ſheriff.

Keilw. 159. Daliſ. 25. 9. Co. 118. 11. Co. 65.

Sect. 51. Alſo it hath been reſolved, that juſtices of *oyer* and *terminer* have no power, either to inquire of a forcible entry or detainer, or to award reſtitution on any ſuch indictment; becauſe when a new power is created by ſtatute, and certain juſtices are aſſigned to execute it, it cannot regularly be executed by any other: and inaſmuch as juſtices of *oyer* and *terminer* have a commiſſion entirely diſtinct from that of juſtices of peace, they ſhall not from the general words of their commiſſion, *ad inquirend' de omnibus tranſgr' et de omnibus aliis articulis et cauſis cont' formam quorumcunque ſtatutorum fact' ſive perpetrat'*, be conſtrued to have any ſuch powers as are ſpecially limited to juſtices of peace.

Farreſl. 138. 7. Ed. 4. 18. 4. H. 7. 18. Dalt. c. 82.

See Rex *v.* Jones, Stra. 474.

Yet it hath been reſolved, that the juſtices of the king's bench may award reſtitution upon an indictment of forcible entry or detainer removed before them, becauſe the ſaid juſtices having a ſupreme and ſovereign juriſdiction over all matters of a criminal and publick nature, have always been eſteemed to have power in all cauſes of this nature, being brought judicially before them, to give the parties ſuch remedies in relation thereto, as they ſhall appear to have a right to demand, either by common law or by ſtatute.

Lamb. 157. Dalt. c. 82.

Sect. 52. The ſheriff, if need be, may raiſe the power of the county to aſſiſt him in the execution of a precept of reſtitution, and therefore, if he make a return thereto, that he

he could not make a reſtitution by reaſon of reſiſtance, he ſhall be amerced.

As to THE TENTH POINT, *viz.* How ſuch reſtitution ſhould be barred by the continuance of a poſſeſſion for three years.

Sect. 53. It appears from the abovementioned proviſo of 8. Hen. 6. and alſo by 31. Eliz. c. 11. that any one indicted upon theſe ſtatutes may alledge ſuch poſſeſſion to ſtay the award of reſtitution: in the conſtruction whereof it hath been holden, that ſuch poſſeſſion muſt have continued without interruption during three whole years next before the indictment; and therefore that he who having been in poſſeſſion of land for three years or more, is forcibly ouſted, and then reſtored by force of the ſtatute of 8. Hen. 6. cannot juſtify a forcible detainer, till he have been in poſſeſſion again for three years after ſuch reſtitution: and alſo for the ſame reaſon it hath been ſaid, that he who under a defeaſible title hath been never ſo long in poſſeſſion of land to which another hath a right of entry, cannot juſtify ſuch a detainer at any time within three years after a claim made by him who hath ſuch a right, becauſe all defeaſible eſtates in the land are wholly defeated by ſuch a claim, and the ſubſequent continuance in poſſeſſion amounted to a new entry.

Salkeld 260. Carthew 496. 12. Mod. 268. Farreſl. 138. Dalt. c. 79. Crompton 71. Summary 139. Dyer 141. 22. H. 6. 18. B. Force 22. 29. 1. Inſt. 256. Raymond 85. 1. Sid. 149.

Sect. 54. There have been ſome opinions that the three years poſſeſſion muſt be of a lawful eſtate, and conſequently that a diſſeiſor's continuance in quiet poſſeſſion for never ſo many years, ſhall not juſtify a forcible detainer; but it ſeems neceſſary to make a diſtinction between a detainer againſt him who has a right of entry, and a detainer againſt a ſtranger, or one who by his laches has loſt his right of entry; for I do not ſee why three years continuance of a defeaſible poſſeſſion ſhould not juſtify a detainer by force againſt a ſtranger, inaſmuch as he cannot take advantage of another's right, and bare poſſeſſion is a good title againſt all perſons, except him who hath the right, and cannot be lawfully defeated by any other. Alſo, if one who has the mere right to lands, have ſo long neglected to recover the poſſeſſion thereof, till in judgment of law he hath no more right to ſuch poſſeſſion, till he has recovered it by action, than a mere ſtranger, there doth not ſeem to be any reaſon that he ſhould have more advantage againſt a forcible detainer, than if he were a mere ſtranger.

Dalt. c. 79. 22. H. 6. 18. Crompton 71.

Holding over by force, where the tenant's title was under a leaſe then expired, is ſaid to be a forcible detainer. Cro. Jac. 199.

Sect.

4. Comm. 149. *Sect.* 55. Alſo it hath been holden, that a peaceable continuance in poſſeſſion for three years after a forcible entry, under any title whatſoever, will not juſtify a forcible detainer, inaſmuch as the poſſeſſion was at firſt gained by force. But I cannot think this a reaſonable conſtruction of the ſaid ſtatutes, for the force in the detainer being after three years quiet poſſeſſion, ſeems juſtifiable by the expreſs words of the ſtatute; and where the force uſed in gaining a poſſeſſion is afterwards wholly laid aſide, there ſeems to be no colour to ſay, that it makes the ſubſequent poſſeſſion leſs quiet or peaceable than it would have been, if there had been no force at all uſed at the firſt.

1. Keb. 538. R. *v.* Burges, Salkeld 261. *Sect.* 56. It ſeems clear from the expreſs purview of the ſaid ſtatute of 31. Eliz. c. 11. that wherever the defendant pleadeth ſuch a poſſeſſion in bar of reſtitution upon ſuch an indictment, either before the juſtices of peace, or in the king's bench, no reſtitution ought to be awarded till the truth of the plea be tried; and it hath been holden, that the plea of ſuch a poſſeſſion is good, without ſhewing under what title, or of what eſtate ſuch poſſeſſion was, becauſe it is not *the title*, but *the poſſeſſion* only, which is material in this caſe.

1. Sid. 149. Raym. 84. 1. Ven. 265.

4. Comm. 148. *Sect.* 57. It ſeems, that from the wording of 31. Eliz. c. 11. if one who has been in poſſeſſion for three years, be ouſted, and the ſame day re-enter with force, and alſo be indicted for ſuch re-entry on the very ſame day, it may be queſtioned whether the proſecutor ought to have reſtitution, inaſmuch as the words of the ſtatute are, "that there ſhall "be no reſtitution, &c. if the perſon indicted have been in "quiet poſſeſſion for three years next before the day of the "indictment found;" and here the defendant hath been in poſſeſſion three years before the day of the indictment, though not three years before the indictment, inaſmuch as he was ouſted the ſame day. But if it be conſidered, that the circumſtance of finding the indictment on that day no way affects the merits of the caſe, or leſſens the offence any more than if it were found on any other day, and that reſtitution muſt have been awarded if it had been found on another day, and that the miſchief complained of in the preamble is, that perſons were by colour of ſuch indictments often turned out of their poſſeſſions which they had quietly enjoyed for three years next before ſuch indictments found, which does not extend to the defendant in the preſent caſe, I rather incline to think, that reſtitution might be awarded to the proſecutor in this caſe; inaſmuch as it clearly appears, that the defendant's poſſeſſion hath not had

1. Burr. 119.

had three years uninterrupted continuance within the intent of the ſtatute.

As to THE ELEVENTH POINT, *viz.* For what other cauſes ſuch reſtitution may be ſtayed.

Sect. 58. It ſeemeth to be ſettled at this day, that if the defendant tender a traverſe of the force, which muſt be done in writing, and not by a bare denial of the force by parol, the juſtice ought not to make any reſtitution till the traverſe be tried; in order whereunto he muſt award a *venire facias*, whereon a jury muſt be returned, on whoſe verdict the award of reſtitution ought to depend. 1. Keb. 343. 2. Keb. 49. 571. 1. Sid. 284. Salk. 587, 588. Caſes temp. Hardwicke, p. 175.

Sect. 59. It hath been reſolved, that if ſuch a jury find part of the indictment to be true, and part of it to be falſe, yet if they find ſo much thereof to be true as will warrant a reſtitution, the juſtice ought to reſtore the party: as where, on an indictment of forcible entry and forcible detainer, the jury find that the entry was peaceful, and the detainer was only forcible. 1. Sid. 97. 99. 1. Keb. 427.

Sect. 60. As the juſtice is bound to ſtay the award of reſtitution, upon the defendant's tendering a traverſe of the force, ſo it hath alſo been ſaid, that he ought not to make ſuch an award in any caſe in the defendant's abſence, without calling him to anſwer for himſelf; for it is implied by natural juſtice, in the conſtruction of all laws, that no one ought to ſuffer any prejudice thereby, without having firſt an opportunity of defending himſelf. Savil 68. Aleyn 78.

As to THE TWELFTH POINT, *viz.* How ſuch a reſtitution may be ſuperſeded before it is executed.

Sect. 61. There is no doubt but that the ſame juſtices, by whom a reſtitution is awarded upon an indictment of forcible entry or detainer found before them, may alſo afterwards, upon an inſufficiency of the indictment appearing unto them, ſuperſede the ſame before it is executed. And it hath alſo been ſaid, that if ſuch an indictment be taken, and reſtitution awarded by four or five juſtices, that two or even one of the ſame juſtices may ſuperſede the execution thereof, as well as more or all of them. But it ſeems to be agreed, that no other juſtices, or other court whatſoever, hath ſuch power, except the King's Bench. Dyer 187. Summary 140. Crom. 165. Dalt. c. 81. 84. Cro. Eliz. 915. Yelv. 32.

Sect. 62. However it is certain, that a *certiorari* from the King's Bench is a *ſuperſedeas* to ſuch reſtitution; for every ſuch *certiorari* has theſe words, *coram nobis terminari volumus et* C. Eliz. 915. Yelv. 32. Moor 677. 1. Keb. 93.

Summary 141. Strange 474. *et alibi*; and consequently it wholly closes the hands of the justices of peace, and avoids any restitution which is executed after the *teste*, but does not bring the justices of the peace, &c. into a contempt, unless they proceed after the delivering thereof.

As to THE THIRTEENTH POINT, *viz.* How such restitution may be set aside after it is executed.

Sayer 176. *Sect.* 63. It is certain, that the justices of the King's Bench, having in general a superintendent power over all the proceedings whatsoever of justices of peace, may set aside any such restitution, if it shall appear to them to have been either awarded or executed against law; as where the Savil 68. Sum. 140, 141. C. Eliz. 31. Sup. f. 58. indictment whereon it was grounded, being removed before them, appears to be insufficient, and thereupon is quashed; or the defendant traverses the force and gets a verdict in the King's Bench; or wherever it sufficiently appears that the justices of peace have been irregular in their proceedings, as by refusing to try a traverse of force tendered by the defendant, &c.

Noy 119. Yelv. 99. C. Jac. 148, 149. *Sect.* 64. Yet if an indictment on these statutes be removed into the King's Bench, and the defendant having been turned out of possession by the grant of restitution to the prosecutor by the justices of peace, traverse the force in the King's Bench, and then the offence be pardoned by a general pardon, the Court cannot proceed on the trial, notwithstanding the defendant would waive the benefit of the B. 2. c. 37. f. 61. pardon, because it appears judicially, that the king can have no benefit of a fine from the defendant if the verdict pass against him; and the Court will never falsify an indictment, which is found by the oaths of twelve men, by bare affidavits; and consequently in this case the defendant can have no remedy to set aside the restitution by controverting the truth of the indictment.

Raymond 85. 1. Keb. 343. 808. 2. Keb. 505. Summary 141. C. Eliz. 916. Salk. 587. Dyer 123. 2. Keb. 571. Savil 68. *Sect.* 65. Neither can a defendant in any case whatsoever, *ex rigore juris*, demand a restitution, either upon the quashing of the indictment, or a verdict for him on a traverse thereof, &c.; for the power of granting a restitution is vested in the King's Bench, only by an equitable construction of the general words of the statutes, and is not expressly given by those statutes; and is never made use of by that Court, but when upon consideration of the whole circumstances of the case, the defendant shall appear to have some right to the tenements, the possession whereof he lost by the restitution granted to the prosecutor.

Sect.

Sect. 66. The court of King's Bench hath been ſo favourable to one, who upon his traverſe of an indictment upon theſe ſtatutes being found for him, hath appeared to have been unjuſtly put out of his poſſeſſion, that they have awarded him a re-reſtitution, notwithſtanding it hath been ſhewn to the Court, that ſince the reſtitution granted upon the indictment, a ſtranger hath recovered the poſſeſſion of the ſame land in the lord's court. C. Eliz.

For the form of the indictment vide 2. Burn's Juſtice 220.

CHAPTER THE SIXTY-FIFTH.

Of RIOTS, ROUTS, and UNLAWFUL ASSEMBLIES.

IN treating of *Riots*, *Routs*, and *Unlawful Aſſemblies*, I ſhall conſider,

FIRST, What ſhall be called a riot, rout, or unlawful aſ-
12. Mod. 510. ſembly.

SECONDLY, How they may be ſuppreſſed and puniſhed by the common law.

THIRDLY, How by ſtatute.

Sect. 1. A RIOT ſeems to be a tumultuous diſturbance
(a) Vide 1. Ven. 251. Salk. 594, 595. Palt. c. 85, 86, 87. Crom. 61, &c. Pulton 25, &c. 3. Inſt. 176. Summary 137. 3. Mod. 141. 509. Strange of the peace, by three perſons (*a*), or more, aſſembling together of their own authority, with an intent mutually to aſſiſt one another, againſt any who ſhall oppoſe them, in the execution of ſome enterprize of a private nature, and afterwards actually executing the ſame in a violent and turbulent manner, to the terror of the people, whether the act intended were of itſelf lawful or unlawful (*b*).

(*b*) See Salk. 594. Popham 202. 1. Ld. Ray. 484. 12. Mod. 262. 196. 11. Mod. 113. 116, 117. 1. Black. 350.

For the better underſtanding whereof, I ſhall conſider the following particulars:

1. How far ſuch an aſſembly may become riotous through the want of legal authority expreſſed or implied, or be excuſable by reaſon of ſuch authority.

2. How far the intention with which the parties aſſemble together muſt be unlawful.

3. With what kind of violence or terror the intended terprize muſt be executed.

4. How far the grievance intended to be redreſſed muſt be of a private nature.

5. Whether the unlawful execution of an act in its own nature lawful may not make an aſſembly riotous.

As

As to THE FIRST POINT, *viz.* How far ſuch an aſſembly may become riotous through the want of legal authority expreſſed or implied, or be excuſable by reaſon of ſuch authority.

Sect. 2. It ſeems, That wherever more than three perſons (1) uſe force and violence in the execution of any deſign whatever wherein the law does not allow the uſe of ſuch force, all who are concerned therein are rioters (A). But in ſome caſes wherein the law authorizes force, it is not only lawful, but alſo commendable to make uſe of it; as for a (*a*) ſheriff or (*b*) conſtable, or perhaps even for a private (*c*) perſon, to aſſemble a competent number of people in order with force to ſuppreſs rebels, or enemies, or rioters, and afterwards with ſuch force actually to ſuppreſs them; or for a juſtice of peace, who has a juſt cauſe to fear a violent reſiſtance, to raiſe the *poſſe*, in order to remove a force in making an entry into, or detaining of, lands. Alſo it ſeems to be the duty of a (*d*) ſheriff, or other miniſter of juſtice, having the execution of the king's writs, and being reſiſted in endeavouring to execute the ſame, to raiſe ſuch a power as may effectually enable them to overpower any ſuch reſiſtance; yet it is ſaid not (*e*) to be lawful for them to raiſe a force for the execution of a civil proceſs, unleſs they find a reſiſtance; and it is certain, that they are highly puniſhable for uſing any needleſs outrage or violence therein.

(1) The words "more than three perſons," are three times over (ſ. 2. 5. 7.) inſerted inſtead of "three perſons or more;" an inſtance, that in a variety of matter it is impoſſible for the mind of man to be always equally attentive.

4. Burn. 88.

(A) Burr. 1262. K. *v.* Scott and Harris. 1. Black. 350.

(*a*) 2. And. 67. Popham 121.

(*b*) 3. H. 7. 10.

(*c*) Pop. 121.

Moor 656. Infra c. 47. ſ. 8. (*d*) 2. Inſt. 193. (*e*) 3. Inſt. 161. 2. Inſt. 193. Hob. 62. 264.

As to THE SECOND POINT, *viz.* How far the intention with which ſuch perſons aſſemble together muſt be unlawful.

Sect. 3. It ſeems agreed, that if a number of perſons being met together at a fair, or market, or church-ale, or any other lawful or innocent occaſion, happen on a ſudden quarrel to fall together by the ears, they are not guilty of a riot, but of a ſudden affray only, of which none are guilty but thoſe who actually engage in it, becauſe the deſign of their meeting was innocent and lawful, and the ſubſequent breach of the peace happened unexpectedly without any previous intention concerning it. Yet it is ſaid, that if perſons innocently aſſembled together, do afterwards, upon a diſpute happening to ariſe among them, form themſelves into parties, with promiſes of mutual aſſiſtance, and then make an affray, they are guilty of a riot, becauſe, upon their confederating together with an intention to break the peace, they may as properly be ſaid to be aſſembled together for

Lamb. 179, &c. Dalt. c. 86. Crom. 61, 62. 6. Mod. 43. Skinner 118. Salkeld 595.

that purpoſe from the time of ſuch conſederacy, as if their firſt coming together had been on ſuch a deſign: however it ſeems clear, that if in an aſſembly of perſons met together on any lawful occaſion whatſoever, a ſudden propoſal ſhould be ſtarted of going together in a body to pull down a houſe, or incloſure, or to do any other act of violence, to the diſturbance of the public peace, and ſuch motion be agreed to, and executed accordingly, the perſons concerned cannot but be rioters, becauſe their aſſociating themſelves together for ſuch a new purpoſe is no way extenuated by their having met at firſt upon another. Alſo it ſeems to be certain, that if a perſon ſeeing others actually engaged in a riot, do join himſelf unto them, and aſſiſt them therein, he is as much a rioter as if he had at firſt aſſembled with them for the ſame purpoſe, inaſmuch as he has no pretence that he came innocently into the company, but appears to have joined himſelf unto them, with an intention to ſecond them in the execution of their unlawful enterprize; and it would be endleſs, as well as ſuperfluous, to examine whether every particular perſon engaged in a riot, were in truth one of the firſt aſſembly, or actually had a previous knowledge of the deſign thereof.

Vide Rex *v.* John Royce, Burrow 2073.

6. Modern 43.

See the caſe of Midwinter and Syms, Foſter's Cro. Law, 3. edit. 415; and the Coalheavers Caſe, Caſes in Crown Law, 61.

As to THE THIRD POINT, *viz.* With what kind of violence or terror the intended enterprize muſt be executed.

Dalt. c. 85. Lamb. 175. 3. Inſt. 176.

Sect. 4. It hath been holden, that it ought to be accompanied with ſome offer of violence, either to the perſon of a man or to his poſſeſſions, as by beating him, or forcing him to quit the poſſeſſion of his lands or goods, &c. And from hence it ſeems to follow, that perſons riding together on the road with unuſual weapons, or otherwiſe aſſembling together in ſuch a manner as is apt to raiſe a terror in the people, without any offer of violence to any one in reſpect either of his perſon or poſſeſſions, are not properly guilty of a riot, but only of an unlawful aſſembly.

Sect. 5. However it ſeems to be clearly agreed, that in every riot there muſt be ſome ſuch circumſtances either of actual force or violence, or at leaſt of an apparent tendency thereto, as are naturally apt to ſtrike a terror into the people; as the ſhow (*a*) of armour, threatening ſpeeches, or turbulent geſtures; for every ſuch offence muſt be laid to be done *in terrorem populi* (2). And from hence it clearly follows, that aſſemblies at wakes, or other feſtival times, or meetings for exerciſe of common ſports or diverſions, as bull-baiting, wreſtling, and ſuch like, are not riotous. And

(*a*) Lamb. 178. Dalt. c. 871. 3. H. 7. 1. 6. Mod. 141. 2. Keb. 558. Con. 1. Roll. 109. 3. Burr. 1263. 11. Mod. 116. Lamb. 179. 11. Mod. 115.

(2) Vide the opinion of Holt, C. J. in the caſe of the Queen *v.* Soley

from

from the ſame ground alſo it ſeems to follow, that it is poſſible for more than three perſons (3) to aſſemble together, with an intention to execute a wrongful act, and alſo actually to perform their intended enterprize, without being rioters; as if a competent number of people aſſemble together, in order to carry off a piece of timber to which one of the company hath a pretended right, and afterwards do carry it away without any threatening words, or other circumſtances of terror. And from the ſame ground it ſeems alſo to follow, that perſons aſſembled together in a peaceful manner to do a thing prohibited by ſtatute, as to celebrate maſs, &c and afterwards peacefully performing the thing intended, cannot be ſaid to be rioters; for there ſeems to be no reaſon why an aſſembly ſhould become riotous barely for doing a thing contrary to ſtatute, any more than for doing a thing contrary to common law.

(3) It ſhould be "three perſons or more:" vide note (1) to ſection 2.

Pulton 25. 3. Keb. 578. Hobart 91. Lambard 178. Crompton 62. *Quære.* 6. Mod. 141. 2. Keb. 558. Con. 1. Mod. 13. 1. Ven. 369. 380. 11. Mod. 116.

As to THE FOURTH POINT, *viz.* How far the grievance intended to be redreſſed muſt be of a private nature.

Sect. 6. It ſeems agreed, that the injury or grievance complained of and intended to be revenged or remedied by ſuch an aſſembly, muſt relate to ſome private quarrel only; as the incloſing of lands in which the inhabitants of a town claim a right of common, or gaining the poſſeſſion of tenements the title whereof is in diſpute, or ſuch like matters relating to the intereſts or diſputes of particular perſons, no way concerning the public; for wherever the intention of ſuch an aſſembly is to redreſs public grievances, as to pull down all incloſures in general, or to reform religion, or to remove evil counſellors from the king, &c. if they attempt with force to execute ſuch their intentions, they are, in the eye of the law, guilty of levying war againſt the king, and conſequently of high treaſon, as appears from chapter 17. ſection 25.

As to THE FIFTH POINT, *viz.* Whether the execution of an act in its own nature lawful, may make an aſſembly riotous.

Sect. 7. It hath been generally holden, that it is no way material whether the act intended to be done by ſuch an aſſembly, be of itſelf lawful or unlawful; from whence it follows, that if more than three perſons (4) aſſiſt a man to make a forcible entry into lands to which one of them has a good right of entry, or if the like number in a violent and tumultuous manner join together in removing a nuſance, which may lawfully be done in a peaceful manner, they are as properly rioters, as if the act intended to be

Quære; and vide Salk. 594, 595. Crom. 64. 66. Dalton c. 87.

(4) It ſhould be "three perſons or more:" vide ſect. 2.

3. Modern 3.
11. Mod. 117.
2. Show. 236.
12. Mod. 648.

done by them were never ſo unlawful; for the law will not ſuffer perſons to ſeek redreſs of their private grievances by ſuch dangerous diſturbances of the public peace. However, the juſtice of the quarrel in which ſuch an aſſembly doth engage, is certainly a great mitigation of the offence.

Lamb. 175, 176.
Crom. 61.
Dalt. c. 85.
B. Riots, 4, 5.
Pulton 25.

Sect. 8. A ROUT ſeems to be, according to the general opinion, a diſturbance of the peace by perſons aſſembling together with an intention to do a thing, which if it be executed, will make them rioters, and actually making a motion towards the execution thereof. But by ſome books the notion of a rout is confined to ſuch aſſemblies only as are occaſioned by ſome grievance common to all the company; as the incloſure of land in which they all claim a right of common, &c. However, inaſmuch as it generally agrees with a riot as to all the reſt of the abovementioned particulars requiſite to conſtitute a riot, which have been already fully explained, except only in this, that it may be a compleat offence without the execution of the intended enterprize, it ſeems not to require any farther explication.

Crompton 61.
B. Riots, 4.
Pulton 25.
Dalt. c. 95.

Sect. 9. AN UNLAWFUL ASSEMBLY, according to the common opinion, is a diſturbance of the peace by perſons barely aſſembling together with an intention to do a thing which, if it were executed, would make them rioters, but neither actually executing it, nor making a motion toward the execution of it. But this ſeems to be much too narrow a definition. For any meeting whatſoever of great numbers of people with ſuch circumſtances of terror as cannot but endanger the public peace, and raiſe fears and jealouſies among the king's ſubjects, ſeems properly to be called an *unlawful aſſembly*; as where great numbers, complaining of a common grievance, meet together, armed in a warlike manner, in order to conſult together concerning the moſt proper means for the recovery of their intereſts; for no one can foreſee what may be the event of ſuch an aſſembly.

Hobart 92.
Salk. 594, 595.
1. Ven. 369.
380.

21 H. 7. 39
Lamb. 179, 180.
Summary 137.
Crom. 64.
B. Riots, 1.
5. Co. 91.
11. Mod. 116.

Sect. 10. Alſo an aſſembly of a man's friends for the defence of his perſon againſt thoſe who threaten to beat him, if he go to ſuch a market, &c. is unlawful; for he who is in fear of ſuch inſults muſt provide for his ſafety by demanding the ſurety of the peace againſt the perſons by whom he is threatened, and not make uſe of ſuch violent methods, which cannot but be attended with the danger of raiſing tumults and diſorders, to the diſturbance of the public peace. Yet an aſſembly of a man's friends in his own houſe, for the defence of the poſſeſſion thereof, againſt thoſe who threaten to make an unlawful entry thereinto, or for

for the defence of his perſon againſt thoſe who threaten to beat him therein, is indulged by law; for a man's houſe is looked upon as his caſtle.

SECONDLY, *viz.* How far offences of this nature may be ſuppreſſed and puniſhed by the common law.

Sect. 11. It ſeems clear, that every ſheriff, under-ſheriff, and alſo every other peace-officer, as conſtables, &c. may and ought to do all that in them lies towards the ſuppreſſing of a riot, and may command all other perſons whatſoever to aſſiſt them therein. Alſo it is certain that any private perſon may lawfully endeavour to appeaſe all ſuch diſturbances by ſtaying thoſe whom he ſhall ſee engaged therein from executing their purpoſe, and alſo by ſtopping others whom he ſhall ſee coming to join them; for if private perſons may do thus much, as it is moſt certain that they may, towards the ſuppreſſing of a common affray, ſurely *à fortiori* they may do it towards the ſuppreſſing of a riot. Alſo it hath been holden, that private perſons may arm themſelves in order to ſuppreſs a riot; from whence it ſeems clearly to follow, that they may alſo make uſe of arms in the ſuppreſſing of it, if there be a neceſſity for their ſo doing. However, it ſeems to be extremely hazardous for private perſons to proceed to thoſe extremities; and it ſeems no way ſafe for them to go ſo far in common caſes, leſt, under the pretence of keeping the peace, they cauſe a more enormous breach of it; and therefore ſuch violent methods ſeem only proper againſt ſuch riots as favour of rebellion, for the ſuppreſſing whereof no remedies can be too ſharp or ſevere.

Popham 121. 3. H. 7. 1. 10.

Popham 121. Kelynge 76.

However, it is enacted by 1. Geo. 1. c. 5. "That if more "perſons than twelve being unlawfully, riotouſly, and tu- "multuouſly aſſembled, twelve or more of them ſhall con- "tinue together, and not diſperſe themſelves within one "hour after proclamation made in purſuance of that ſtatute, "that then every peace-officer of the place where ſuch aſ- "ſembly ſhall be, and all perſons who ſhall be commanded "to be aſſiſting to ſuch officer, may and ought to appre- "hend all ſuch rioters, and carry them before ſome juſtice "of peace; and that if any ſuch rioter ſhall happen to be "killed, maimed, or hurt by reaſon of their reſiſting ſuch "officer, &c. the officer ſhall be diſcharged, &c." But the ſtatute being wholly in the affirmative, cannot be thought to take away any part of the authority in the ſuppreſſing of a riot, which was before that time given either to officers or private perſons by the common law or by ſtatute.

A perſon preſent aiding and abetting rioters is a principal in the ſecond degree, under this act of parliament. 4. Burr. 2073.

Vide Douglas, p. 700. n. (1) (2)

Sect.

Sect. 12. Generally, offences of this nature are punished at the common law as trespasses, by fine and imprisonment only; yet sometimes, where they have been very enormous, they have been punished with the pillory; and anciently, if they were undertaken in contempt of the king's express prohibition of their meeting, under pain of forfeiture of lands, &c. they seem to have been punishable with such forfeiture.

Crompton 61. Dalt. c. 46. C. Car. 507. 2. R. Abr. 208.

Sect. 13. It hath been holden, that the persons of whom a corporation consists, being guilty of a riot, are punishable in their natural, but not in their politic capacity; for the corporation itself cannot be in fault, because it is invisible, and exists only in supposition of law. Yet there are some precedents by which it appears, that corporations have been amerced (5), and their liberties seized into the king's hands, for suffering a dangerous riot to happen within their jurisdiction without using their endeavours to suppress it.

21. Ed. 4. 13, 14. Dalt. c. 88. C. Car. 252. 2. Hale 155.

(5) Vide the King v. Kennet, Ld. Mayor of London, during the riots in the year 1780.

Sect. 14. Women are punishable as rioters, but infants under the age of discretion are not.

THIRDLY, *viz.* How far offences of this nature may be suppressed and punished by statute. I shall consider,

1. How far they may be suppressed and punished by one justice of peace.

2. And, how far by two or more.

As to THE FIRST of these points, *viz.* How far they may be suppressed and punished by one justice of peace.

Sect. 15. It is enacted by 34. Edw. 3. c. 1. "That justices of peace shall have power to restrain offenders, rioters, and all barrators, and to pursue, arrest, take and chastise them according to their trespass and offence; and to cause them to be imprisoned and duly punished, &c."

Sect. 16. And this statute has been liberally construed for the advancement of justice; for it hath been resolved, that if a justice of peace find persons riotously assembled, he alone, without staying for his companions, hath not only power to arrest the offenders, and bind them to their good behaviour, or imprison them if they do not offer good bail, but that he may also authorise others to arrest them by a bare parol command without other warrant, and that by force thereof the persons so commanded may pursue and arrest the offenders in his absence as well as presence. It is also said, that if a justice of peace be sick, and hear that persons are riotously assembled, he may send his servants to arrest

14. H. 7. 9. Lamb. 181, &c. Dalt. c. 46. B. Peace, 7. Fulton 28. Crom. 62, 63, 64, 65. 195. Keilway 41.

arreſt them and bring them before him; and that if he hear that perſons are riotouſly together in a certain place, and go thither and find none there, he may leave his ſervants behind him with a command to arreſt them when they ſhall come. Alſo it is ſaid, that after a riot is over, any one juſtice of peace may ſend his warrant to arreſt any perſon who was concerned in it; and alſo that he may ſend him to gaol, till he ſhall find ſureties for his good behaviour.

Sect. 17. But it ſeems to be agreed, that no one (*a*) juſtice of the peace hath any power by force of this ſtatute, either to record a riot upon his own view, or to take an inquiſition thereof after it is over. Alſo if one juſtice of peace, proceeding upon this ſtatute, ſhall arreſt an innocent perſon as a rioter, it ſeemeth that he is liable to an action of treſpaſs, and that the party arreſted may juſtify the reſcuing of himſelf, becauſe no ſingle juſtice of peace is by this ſtatute made a judge of the ſaid offence. (*b*) But if a riot ſhall be committed by perſons armed in an unuſual manner, contrary to the *ſtatute of Northampton*, and any one juſtice of peace acting *ex officio*, in purſuance of the ſaid ſtatute, ſeize the armour and impriſon the offender, and make a record of the whole matter, ſuch a record cannot be traverſed, becauſe it is made by one acting in a judicial capacity, as appears more at large in the chapter of Affrays: and for the ſame reaſon, if a juſtice of peace proceeding on the ſtatute of 15. Rich. 2. againſt forcible entries and detainers, ſhall, upon his own view, record a riot, which ſhall be committed in the making of any ſuch forcible entry or detainer, a riot ſo recorded cannot be traverſed, as hath been ſhewn in the foregoing chapter. Alſo if a juſtice of peace acting as a judge, by virtue of any ſtatute whatſoever impowering him ſo to do, make a record upon his view of a riot committed in his preſence, ſuch record ſhall not be traverſed; for the law gives ſuch an uncontroulable credit to all matters of record, made by any judge of record as ſuch, that it will never admit of an averment againſt the truth thereof.

(*a*) B. Peace, 7. Keilw. 41. Lamb. 181, &c. Pulton 26. Summary 137. Crom. 61. 63. 65. Dalt. c. 46. Con. B. Judges 10.

(*b*) 8. Co. 121. Dalt. c. 22, 23.

Crompton 65. Lambard 317. Vide inf. f. 25.

Sect. 18. It hath been queſtioned, whether a juſtice of peace be authoriſed by virtue of the abovementioned ſtatute of 34. Edw. 3. c. 1. to raiſe the power of the county to ſuppreſs a riot; but it ſeemeth, that by being made a conſervator of the peace, he hath, by an implication of law, all ſuch powers in relation thereto, as are incident to the office of a conſervator of the peace by the common law; and conſequently, that he hath a right of demanding the aſſiſtance of others to enable him to preſerve the peace, in the ſame manner as every ſheriff and conſtable are impowered to demand

Pult. 25, 26. Lambard 314. Crompton 62.

3. H. 7. 10. 3. Inſt. 158. Vide ſupra.

mand ſuch aſſiſtance by the common law. However, there ſeems to be no reaſon to doubt, but that every juſtice of peace is authorized by the ſtatute of 17. Rich. 2. c. 8. to raiſe the power of the county to repreſs a riot; for by the ſaid ſtatute it is enacted, "That as ſoon as the ſheriffs, and other the "king's miniſters," under which words all juſtices of peace clearly to be included, "ſhall hear of a riot, rout, or other "aſſembly againſt the peace, they with the power of the "county where ſuch caſe ſhall happen, ſhall diſturb ſuch "malice with all their power, and ſhall apprehend all "ſuch offenders, and put them in priſon, until due execu-"tion of the law be made of them; and that the lords and "other liege people of the realm ſhall attend, with their "whole ſtrength and power, the ſheriffs and miniſters "aforeſaid."

As to THE SECOND POINT, *viz.* How far offences of this nature may be ſuppreſſed and puniſhed by two or more juſtices of peace.

Sect. 19. It is enacted by 13. Hen. 4. c. 7. "That if "any riot, aſſembly, or rout of people againſt the law, be "made in parties of the realm, the juſtices of peace, three "or two of them at the leaſt, and the ſheriff or under-"ſheriff of the county where ſuch riot, aſſembly, or "rout ſhall be made hereafter, ſhall come with the power "of the county (if need be) to arreſt them; and ſhall arreſt "them; and the ſame juſtices and ſheriff, or under-ſheriff, "ſhall have power to record that which they ſhall find ſo "done in their preſence againſt the law. And that by the "record of the ſame juſtices and ſheriff, or under-ſheriff, "ſuch treſpaſſers and offenders ſhall be convict in the "manner and form as is contained in the ſtatute of For-"cible Entries."

Sect. 20. In the conſtruction of this ſtatute, compared with the above-mentioned ſtatute of 17. Rich. 2. c. 8. and alſo with the ſtatute of 2. Hen. 5. c. 8. it hath been holden, that all perſons whatſoever, and even noblemen, and all others of what condition or degree ſoever they may be, except women, clergymen, perſons decrepit, and infants under the age of fifteen years, are bound, under pain of fine and impriſonment, upon reaſonable warning, to attend the juſtices and ſheriffs in the execution of the ſaid ſtatute, and not only to arreſt the rioters, but alſo to conduct them to priſon.

Fulton 29. Dalt. c. 26. Crom. 63. Lamb. 116. 345.

Sect.

Sect. 21. Alſo it hath been holden, that thoſe who attend the juſtices in order to ſuppreſs a riot, may take with them ſuch weapons as ſhall be neceſſary to enable them effectually to do it, and that they may juſtify the beating, wounding, and even the killing of ſuch rioters as ſhall reſiſt, or refuſe to ſurrender themſelves. Pop. 120, 121. Crompton 62. Dalton c. 46. Lambard 316.

Sect. 22. It is ſaid, that the juſtices of peace are not only impowered by the ſaid ſtatute to raiſe the power of the county to aſſiſt them in ſuppreſſing a riot which ſhall happen within their own view or hearing, but alſo, that they may ſafely do it upon a credible information given them of a notorious riot happening at a diſtance, whether there were any ſuch riot in truth or not; for it may be dangerous for them to ſtay till they can get certain information of the fact: but they ſeem to be puniſhable for alarming the country in this manner, without ſome ſuch probable ground of their proceeding as would induce a reaſonable man to think it neceſſary and convenient. Lambard 315, 316. 318, 319. Dalt. c. 46. Pulton 29. Crom. 64.

Sect. 23. It ſeems clear from the ſaid ſtatute, that if the juſtices, &c. in going towards the place where they have heard that there is a riot, ſhall meet perſons coming from thence riotouſly arrayed, they may arreſt them for being aſſembled together in ſuch an unlawful manner, and alſo make a record thereof, &c. for the ſtatute extends to all other unlawful aſſemblies whatſoever, as well as to riots. Dalt. c. 46. Lamb. 316. Crom. 63.

Sect. 24. Alſo it ſeems clear, that after the juſtices have had a view of a riot they may make a record thereof, whether the offenders be in cuſtody at the ſame time, or have eſcaped; and it is ſaid that the juſtices may lawfully, upon a freſh purſuit, arreſt ſuch of the offenders as ſhall have eſcaped, but that they cannot at another time award any proceſs on ſuch a record, and therefore that they ought to ſend it into the King's Bench, if any of the offenders eſcape from a freſh purſuit, and that proceſs ſhall iſſue againſt them from thence: however, there ſeems to be no doubt, but that any of the ſame juſtices who have recorded a riot, or any other juſtice of peace, may, at any time, by virtue of the abovementioned ſtatute of 34. Edw. 3. c. 1. arreſt thoſe who have been notoriouſly guilty of a riot, in order to compel them to find ſureties for their good behaviour. Lamb. 318. Dalt. c. 46. Pulton 29. 8. Co. 121. Vide inf. ſ. 29. Vide ſup. 15, 16.

Sect. 25. It ſeemeth to be certain, that the record of a riot expreſly mentioned to have happened within the view of the juſtices by whom it is recorded, is a conviction of ſo great Raymond 386. Crom. 65. 63. Dalton c. 46.

great authority, that it can no way be traverſed, however little ground in truth there might be to affirm that any riot at all was committed, or however innocent the parties may be of the fact recorded againſt them. And it is ſaid, that if any one be bound by recognizance to keep the peace, and, on a *ſcire facias* thereon, ſuch a record of a riot be produced againſt him, he ſhall not only be concluded thereby from pleading the general iſſue, but alſo from pleading any matter of juſtification whatſoever.

Pulton 29. Lamb. 316, 317.

Lambard 317. Dalton c. 130.

Sect. 26. However it ſeemeth clear, that if in ſuch a record of a riot it be contained, that the party was guilty therein of a felony, or maim, or reſcous, the party ſhall be concluded thereby as to the riot only, and not as to any of the other matters, becauſe the juſtices of peace have by this ſtatute, a judicial authority over no other offences except riots, routs, and unlawful aſſemblies.

Lambard 316. Dalton c. 46.

Sect. 27. And inaſmuch as ſuch a record is a final conviction of the parties as to all ſuch matters as are properly contained in it, it ought to be certain both as to the time and place of the offence, and the number of perſons concerned therein, and the ſeveral kinds of weapons made uſe of by them, and all other circumſtances of the fact; for ſince the parties are concluded from denying the truth of ſuch a record, and have no other remedy to defend themſelves againſt it, but only by taking advantage of the inſufficiency of what is contained in it, they may juſtly demand the benefit of excepting to it, if it do not expreſsly ſhew both that they are guilty within the meaning of the ſtatute, and alſo how far they are guilty, and that the juſtices have purſued the power given them by the ſaid ſtatute; and from the ſame ground it ſeems alſo to follow, that ſuch a record may be excepted againſt, if it do not appear to have been made by the ſheriff or under-ſheriff in concurrence with the juſtices.

Lambard 319. Raymond 386. Con. Dalt. c. 46.

Lambard 317. Dalton c. 46.

Sect. 28. It is ſaid, that the offenders being under the arreſt of the ſaid juſtices, and alſo convicted by a record of their offence, ought immediately to be committed to gaol by the ſame juſtices, till they ſhall make fine and ranſom to the king, which can be aſſeſſed by no other juſtices of peace except thoſe by whom the record of the offence was made; and by 2. Hen. 5. c. 8. ſuch fine ought to be larger than it was wont to be before that ſtatute, for the ſupport of the charges of the ſaid juſtices, &c. whereof payment ought to be made by the ſheriff, by indenture thereof between him and them.

Sect.

Sect. 29. It is farther enacted by the ſaid ſtatute of 13. Hen. 4. c. 7. that if it ſhall happen, "that ſuch treſpaſſers "and offenders be departed before the coming of the ſaid "juſtices and ſheriff, and under-ſheriff, that the ſame juſ- "tices, three or two of them ſhall diligently inquire, with- "in a month after ſuch riot, aſſembly, or rout of people "ſo made, and thereof ſhall hear and determine accord- "ing to the law of the land."

Sect. 30. Alſo it is farther enacted by 19. Hen. 7. c. 13. "That the ſheriff having a precept directed to him to re- "turn a jury in purſuance of 13. Hen. 4. c. 7. ſhall return "twenty-four perſons dwelling within the ſhire where ſuch "riot, rout, or unlawful aſſembly ſhall be ſo committed "and done, whereof every of them ſhall have lands and te- "nements within the ſame ſhire, to the yearly value of "twenty ſhillings of charter-land or freehold, or twenty- "ſix ſhillings and eight-pence of copyhold, or of both, "over and above all charges, for to enquire of the ſaid riot, "rout, or unlawful aſſembly. And that he ſhall return "upon every perſon ſo by him impanelled, in iſſues at "the firſt day twenty ſhillings, and at the ſecond day for- "ty ſhillings, if they appear not, and be ſworn to inquire "of the premiſes at the firſt day. And that the ſheriff for "every default, &c. ſhall forfeit twenty pounds, &c.

Sect. 31. It is not clearly ſettled, whether the month, within which the juſtices of peace are confined to take their inquiry by force of theſe ſtatutes, muſt be reckoned according to the computation of a lunar or ſolar month. However it ſeems to be agreed, that if the juſtices give their charge to the jury, and it is ſaid, that if they do but award a precept for the returning of the jury within a lunar month, they may take the verdict afterwards; for the cauſe being regularly attached in them within the time preſcribed by the ſtatute, ſhall be proſecuted as all other caſes ought, with ſuch convenient diſpatch as to the judges thereof ſhall ſeem proper; and the ſtatute, by obliging the juſtices to make ſo ſpeedy an inquiry, meant not to hurry them in the execution of it.

1. Sid. 186. 1. Keb. 495. Vide ſupra. Lamb. 322. Dalt. c. 46. Pulton 29. 6. Mod. 141. Salkeld 593.

Sect. 32. It is generally ſaid, that any juſtice of the county may take ſuch an inquiry, whether they dwell near the place where the riot happened or at a diſtance, or whether they went to view the riot or not; for the ſtatute ought to be conſtrued as largely as the words will bear, in favour of the juſtices power in the ſuppreſſing of ſuch riots; and therefore thoſe words in the ſtatute, "that the ſame juſtices, "&c. ſhall enquire," ought to be thus expounded, that the ſame

Lamb. 322. 327. Dalton c. 46. Pulton 29. Cromp. 62, 63 ſeems contrary.

ſame juſtices who were before impowered to raiſe the *poſſe*, &c. ſhall inquire; and it is clear, that any juſtices in the county are within that part of the ſtatute which gives that power; neither is it any way reaſonable to conſtrue the laſt clauſe of the ſaid ſtatute, whereby the juſtices who dwell nigheſt, are bound to execute the ſtatute under pain of one hundred pounds, in ſuch a manner as to reſtrain the juriſdiction of thoſe who, by the foregoing part of the ſaid ſtatute, are authoriſed to execute it; for if ſuch an expoſition ſhould prevail, the negligence of the juſtices who happen to dwell nigheſt would make the ſtatute wholly ineffectual.

See Sect. 44.

Lambard 321. Raymond 386. Salkeld 593. Carthew 383.

Sect. 33. It ſeems clear from the wording of the above-mentioned clauſe, that the ſheriff ought not to join with the juſtices in taking of ſuch an inquiry, as he ought to do in making a record of a riot upon view.

Lamb. 323. 328. Dalt. c. 46. and c. 132. Pulton 26. Crompton 67.

Sect. 34. Alſo it ſeems clear from theſe words in the ſtatute of 13. Hen. 4. c. 7. "that the ſame juſtices ſhall "hear and determine, &c." that they may award proceſs under their own *teſte*, againſt thoſe who ſhall be indicted before them of any of the offences abovementioned, according to the form of the ſaid ſtatute; and alſo that they may award the like proceſs for the trial of a traverſe of ſuch an inquiſition, and do all other things in relation thereunto, which are of courſe incident to all courts of record.

Dalt. c. 46. Crompton 61.

Sect. 35. But it hath been queſtioned, whether the juſtices can ſafely diſmiſs the offenders upon their paying ſuch a fine as ſhall be impoſed upon them, without ſome judgment for their impriſonment as well as fine, inaſmuch as the ſtatute of 2. Hen. 5. c. 8. is expreſs, "that all rioters "attainted of great and heinous riots ſhall have one whole "year's impriſonment at the leaſt, without bail, &c." and "that rioters attainted of petit riot, ſhall have impriſon-"ment, as beſt ſhall ſeem to the king or to his council."

Crompton 63. Pulton 24. Dalton c. 46. See 1. Leon. 282.

Sect. 36. Formerly, if the fine impoſed upon riots by juſtices of peace had been too favourable, it was a common practice for the court of Starchamber afterwards to impoſe ſuch other fine as might, together with that which was aſſeſſed by the juſtices of peace, be proportionable to the heinouſneſs of the offence; and this was ſaid not to be a double puniſhment for the ſame offence, but only an award of due penalty at ſeveral times.

Sect. 37. It is farther enacted by the ſaid ſtatute of 13. Hen. 4. c. 7. "That if the truth cannot be found in the man-

" manner as is aforeſaid, then within a month then next " following, the juſtices, three, or two of them, and the " ſheriff, or under-ſheriff, ſhall certify before the king " and his council all the deeds and the circumſtances " thereof; which certificate ſhall be of like force as " the preſentment of twelve men: upon which certi- " ficate the ſaid treſpaſſers and offenders ſhall be put to " anſwer, and they which ſhall be found guilty, ſhall be " puniſhed according to the diſcretion of the king and his " council. And if ſuch treſpaſſers and offenders do traverſe " the matter ſo certified, the ſame certificate and traverſe " ſhall be ſent into the king's bench, there to be tried and " determined, as the law requireth; and if they appear not " before the king and his council, or in the king's bench, " upon ſuch proceſs and proclamation for their appearance " as are required by the ſaid ſtatute, they ſhall be attainted " of the riot, &c."

Sect. 38. And it is further enacted by 19. Hen. 7. c. 13. " That if a riot, &c. be not found by the jury by reaſon of " any maintenance or embracery of the jurors, then the " ſame juſtices, &c. over and above ſuch certificate which " they muſt and are bound to make by the ſaid ſtatute of " 13. Hen. 4. c. 7. ſhall in the ſame certificate certify the " names and miſdemeanors of ſuch maintainers, &c. on " pain that every of the ſaid juſtices, &c. ſhall forfeit " twenty pounds, if they have no reaſonable excuſe for not " certifying the ſame; which certificate ſo made ſhall be of " like force as if the matter were found by verdict of twelve " men; and every perſon duly proved to be ſuch a main- " tainer, &c. ſhall forfeit twenty pounds, &c."

Sect. 39. In the conſtruction of theſe ſtatutes it hath been holden, that the certificate required by the abovemen- tioned ſtatutes may be made, either by the juſtices, &c. who went to ſee the riot, or by thoſe who took the inquiry; but it ſeems to be moſt proper, that wherever ſuch an in- quiſition is taken, ſuch certificate ſhould be made by ſuch juſtices who made the inquiry, becauſe they, having had the examination of the fact, muſt needs be beſt able to judge of the circumſtances thereof, and in that reſpect are the moſt proper perſons to ſupply the defects of the inquiry. However, the ſaid ſtatute of 19. Hen. 7. c. 13. which is grafted on 13. Hen. 4. c. 7. ſeems clearly to imply, that ſome juſtices are bound in a more eſpecial manner to make ſuch certificate than any others, by impoſing the penalty of twenty pounds on thoſe who neglected to make it as they are bound by 13. Hen. 4. c. 7. which part of the ſtatute ſeems to be moſt reaſonably applied to thoſe juſtices who

Lamb. 323. 326. Pulton 29. Dalton c. 46.

took the inquiry; or, in caſe that no inquiry was taken, to thoſe juſtices who endeavoured to take one, but by the fault of others were hindered from taking it; for there was no need of ſuch an additional penalty on the neighbouring juſtices who were bound before to do their duty in executing 13. Hen. 4. c. 7. under pain of forfeiting one hundred pounds, as will be ſhewn ſection forty-four, &c.

Pulton 29. Lambard 324 Dalton c. 46.

Sect. 40. Alſo it is generally ſaid, that ſuch a certificate muſt be made within a month after the inquiry. And this ſeems to be a very reaſonable conſtruction where an inquiry has actually been made; but it may happen that no inquiry at all may be taken, either through the default of the ſheriff in not returning a jury, or the obſtinacy of the jurors in refuſing to appear, or the rebellious humour of the people in not ſuffering the juſtices to do their duty; in all which caſes a certificate ſeems to be required, both by the intent and letter of the ſtatute, the words whereof, as to this purpoſe, are, "If the truth cannot be found in the manner as "is aforeſaid, then within a month then next following, "the juſtices, &c. ſhall certify, &c." And therefore in theſe caſes it ſeems proper to make a certificate of the obſtructions which prevented the taking of ſuch an inquiry, within a month after they happen.

Lambard 324. C. Cromp. 63. Dalt. c. 46. & 103. B. Præm. 1.

Sect. 41. It ſeemeth clear from the plain words of the ſtatute, that the certificate ought to be made to the privy council board, which is clearly diſtinguiſhed both from the chancery, and alſo from the king's bench, which in ſome ſtatutes relating to judicial proceedings are taken for the king's council.

Pulton 29. Crompton 63. Lamb. 325, 326. Dalton c. 46.

Sect. 42. It is ſaid, that if there be variance between the inquiſition and the certificate, that ſhall be taken which is moſt for the king's advantage; and therefore if the inquiſition be of a riot by ten perſons, and the certificate be of a riot by twenty, or by ten in harneſs, or of a battery joined with a riot, that the certificate ſhall be preferred, becauſe the fine to the king ſhall be greater; but if they differ only as to the time, it is ſaid that the inquiſition ſhall be preferred.

Dalton c. 46. & c. 130. Lamb. 321, 322.

Sect. 43. Alſo it ſeemeth certain, that ſuch a certificate, being in the nature of an indictment at common law, ought to comprehend the certainty of time, place, and perſons, and other material circumſtances, both of the riots and maintenance, &c. but perhaps it need not expreſs the additions of the offenders.

Sect.

Sect. 44. It is farther enacted by the ſaid ſtatute of 13. Hen. 4. c. 7. "That the juſtices of peace dwelling nigheſt "in every county where ſuch riot, aſſembly, or rout of peo- "ple ſhall be made hereafter, together with the ſheriff or un- "der-ſheriff of the ſame county, and alſo the juſtices of aſ- "ſizes, for the time that they ſhall be there in their ſeſſion, "in caſe that any ſuch riot, aſſembly, or rout be made in "their preſence, ſhall do execution of this ſtatute, every one "upon pain of one hundred pounds, to be paid to the king "as often as they ſhall be found in default of the execution "of the ſame ſtatute."

In the conſtruction of this clauſe the following opinions have been holden:

Sect. 45. FIRST, That no juſtice of peace is in danger of incurring the penalty thereof, unleſs he dwell in the county wherein a riot happens. Lambard 236. Crompton 63. Dalton c. 46.

Sect. 46. SECONDLY, That if any juſtices of peace, who do not dwell neareſt to the place, do actually execute the ſtatute, they excuſe all the reſt. Dalton c. 46. Lambard 326. Crompton 63.

Sect. 47. THIRDLY, That if the juſtices whoſe dwelling was neareſt at the time of the riot, or one of them, happen to die within the month, thoſe whoſe dwelling is thereby become the neareſt, are bound to execute the ſtatute in the ſame manner as the others were. Pulton 30. Crompton 62.

Sect. 48. FOURTHLY, That notwithſtanding thoſe juſtices only, who dwell neareſt, are liable to the penalty of the ſtatute, yet if any others on notice neglect to ſupply their default, they are finable at diſcretion. Lambard 327. Dalton c. 46. Pulton 30.

Sect. 49. FIFTHLY, That if the two juſtices, or one of them, do their duty in executing, or endeavouring to execute the ſtatute, they ſhall not incur any penalty through a default of the ſheriff, &c. either in refuſing to appear, or to return a jury, &c. Crompton 63. Lambard 327. Dalton c. 46. Pulton 30.

Sect. 50. SIXTHLY, That the ſaid juſtices, &c. ſhall not avoid the penalty by executing the ſtatute in part only, as by recording a riot without committing the parties. Crompton 61.

Sect. 51. SEVENTHLY, That no juſtice, &c. is ſubject to the penalty of the ſaid ſtatute on account of a petit riot, but only of ſuch riots as are notorious, and in the nature of inſurrections and rebellions. Dalton. c. 46.

Dyer 210. Lambard 328. Pulton 28. Crompton 62. Dalton c. 46.

Sect. 52. EIGHTHLY, That if a juſtice of peace, &c. had no expreſs notice given him of the riot, he ſhall be excuſed, unleſs it were ſo very flagrant that by common intendment every one dwelling near it could not but have notice thereof.

Crompton 62. Lambard 322. Pulton 28. Dalton c. 46. Crompton 64.

Sect. 53. NINTHLY, That the acquieſcence or agreement of the parties aggrieved is no excuſe to the juſtices, becauſe they ought, *ex officio*, to make the enquiry, and make proclamation whether any will give evidence for the king, &c. and may bind ſuch of the parties grieved as ſhall refuſe to proſecute their complaint, to their good behaviour.

Sect. 54. Alſo it is farther enacted by 2. Hen. 5. c. 8. "That upon any default of the ſaid juſtices, &c. touching "the execution of 13. Hen. 4. a commiſſion ſhall be awarded at the inſtance of the party grieved, to enquire as well "of the truth of the caſe as of the default of the ſaid juſtices, &c. and that the ſaid commiſſioners ſhall preſently "return into *chancery* the inqueſts before them taken; "and that the jurors, who ſhall make inquiry, ſhall be "worth 10l. *per annum*, and ſhall be returned by the coroners, if the ſheriff, ſuppoſed to be in default, continue "in his office, &c." See the ſtatute.

Sect. 55. And it is farther enacted by 2. Hen. 5. c. 9. and 8. Hen. 6. c. 14. "That THE LORD CHANCELLOR, upon "complaint made to him that a dangerous rioter is fled into "places unknown, and alſo upon a ſuggeſtion under the "ſeals of two juſtices of peace and the ſheriff, that the common fame and voice runneth in the county of the riot, "may award a *capias* againſt the party, returnable in chancery, upon a certain day, &c. and afterwards a *writ of* "*proclamation* returnable in the king's bench, &c.

Sect. 56. But all the penalties of the above-mentioned ſtatutes having been found by experience not to be ſufficient to reſtrain the rage of the populace from breaking out into dangerous tumults, whenever they happen to be perſuaded that they lie under any real or pretended grievance, it was thought neceſſary to make a farther proviſion againſt ſuch inſolent diſturbances of the peace, by more ſevere laws; and to this end it was enacted, by the RIOT ACT 1. Geo. 1. 4. Burr. 2073. c. 5. "That if any perſons, to the number of twelve, (5)

(5) It is not perfectly clear from the penning of the act, whether it is neceſſary that there ſhould be twelve or more rioters in order to entitle the party injured to his action againſt the hundred. (Vide ſect. 59.) But, according to the moſt obvious conſtruction, that number is not neceſſary to conſtitute the felony created by ſection 4. Douglas 700. And in the caſe of Pritchard *v.* Waldron, 5. Term Rep. 14. it is ſaid to have been ſolemnly determined in the caſe of the rioters in the year 1780, that it is not neceſſary that twelve perſons ſhould be aſſembled to conſtitute a capital crime on the 4th clauſe of this ſtatute.

"or

" or more, being unlawfully, riotouſly, and tumultuouſly " aſſembled together, to the diſturbance of the public peace, " and being required or commanded by any juſtice of peace, " ſheriff of the county, or under-ſheriff, or by the mayor, " bailiff, or bailiffs, or other head-officer or juſtice of the " peace of any city, or town corporate, where ſuch aſſem- " bly ſhall be, by proclamation to be made in the king's " name immediately to diſperſe themſelves, and peaceably " to depart to their habitations, or to their lawful buſineſs, " under the pains of the ſaid ſtatute, ſhall afterwards un- " lawfully, riotouſly, and tumultuouſly continue together " by the ſpace of one hour after ſuch proclamation made, " or after a wilful let or hindrance of a juſtice of peace, &c. " from making the ſame proclamation, ſhall be adjudged " felons without benefit of clergy, &c."

Sect. 57. And it is further enacted by the ſaid ſtatute, " That if any perſon or perſons ſhall, with force and arms, " wilfully and knowingly oppoſe, obſtruct, or in any man- " ner wilfully and knowingly let, hinder, or hurt any per- " ſon, &c. who ſhall begin to proclaim, or go to pro- " claim, according to the proclamation appointed by the " ſaid ſtatute, whereby ſuch proclamation ſhall not be " made, they ſhall be adjudged felons without benefit of " clergy."

Sect. 58. And it is farther enacted by the ſaid ſtatute, " That if any perſons unlawfully, riotouſly, and tumul- " tuouſly aſſembled together, to the diſturbance of the pub- " lic peace, ſhall unlawfully and with force demoliſh or pull " down, or begin to demoliſh or pull down any church " or chapel, or any building for religious worſhip, certi- " fied and regiſtered according to 1. Will. and Mary, c. 18." which is commonly called THE TOLERATION ACT, " or " any dwelling-houſe, barn, ſtable, or other out-houſe, " they ſhall be adjudged felons without the benefit of " clergy."

N. B. Vide the trials of the rioters in the year 1780.

Sect. 59. And it is farther enacted by the ſaid ſtatute, " That whenever any ſuch church, &c. ſhall be demoliſhed, " &c. by any ſuch rioters, &c. the inhabitants of the town " or hundred wherein the riot happened, ſhall be bound " to make good the damage, &c."

Vide Cowper 485.

† *Sect.* 60. And it is recited by 9. Geo. 3. c. 29. " That " whereas ſome doubts have ariſen whether the ſaid act of " 1. Geo. 1. ſ. 2. c. 5. extends to the pulling down and demo- " liſhing of mills," thereupon it is enacted, " That if any " perſon or perſons, unlawfully, riotouſly, and tumultu- " ouſly

For the riotous deſtruction of fences, trees, &c. vide 6. Geo. 1. c. 16. ante p. 215.

" ouſly aſſembled together, to the diſturbance of the public " peace, ſhall unlawfully, and with force demoliſh, or " pull down, or begin to demoliſh or pull down any " wind ſaw mill, or other windmill, or any water-mill, " or other mill, which ſhall have been or ſhall be erected, " or any of the works thereto reſpectively belonging; ſuch " offender ſhall ſuffer death without clergy;" provided the proſecution be commenced within eighteen months after the offence committed.

Noy 101. 2. Croke 37. Moor 755. 4. Comm. 147.

† *Sect.* 61. It is enacted by 13. Car. 2. c. 5. " That no " perſon or perſons whatſoever ſhall ſolicit, labour, or pro- " cure the getting of hands, or other conſent of any per- " ſons above the number of twenty, to any petition, com- " plaint, remonſtrance, declaration, or other addreſs to the " king, or both, or either houſes of parliament, for alter- " ation of matters eſtabliſhed by law in church or ſtate, " unleſs the matter thereof have been firſt conſented unto, " and ordered by three or more juſtices of that county, or " by the major part of the grand jury of the county, or di- " viſion of the county, where the ſame matter ſhall ariſe, " at their public aſſizes, or general quarter ſeſſions, or if " ariſing in London, by the lord mayor, aldermen, and " common council aſſembled; and that no perſon or per- " ſons whatſoever ſhall repair to his majeſty, or both, or " either the houſes of parliament upon pretence of deliver- " ing any petition, complaint, remonſtrance, or declara- " tion, or other addreſſes, accompanied with exceſſive num- " ber of people, nor at any one time with above the num- " ber of ten people, upon pain of incurring a penalty not " exceeding one hundred pounds and three months impri- " ſonment, on conviction, by two witneſſes, within ſix " months, at the king's bench, aſſizes, or quarter ſeſſions. " But this act ſhall not prevent the preſentation of any pub- " lic or private grievance, to any member of parliament, " by any number not exceeding twenty, or to the king, " for any remedy to be had thereupon." (6)

(6) N. B. By 1. Will. & Mary, ſeſſ. 2. c. 2, ſ. 1. art. 5. uſually ſtyled the Bill of Rights, it is enacted, " That it is the right of the ſubjects to petition the king, and " that all commitments and proſecutions for ſuch petitioning are illegal." On the trial of Lord George Gordon, it was contended that this article had virtually repealed the above ſtatute of Charles; but Lord Mansfield declared it was the unanimous opinion of the Court, that neither that, nor any other act of parliament, had repealed it, and that it was in full force. Douglas 592, 593.

CHAP-

CHAPTER THE SIXTY-SIXTH.

OF OFFENCES BY OFFICERS IN GENERAL.

OFFENCES under the degree of capital, more immediately againſt the ſubject, not amounting to an actual diſturbance of the peace, are either,

1. Such as are committed by officers.

2. Such as are committed by common perſons without any relation to an office.

Offences by officers ſeem reducible to the following heads:

FIRST, Neglect, or breach of duty.

SECONDLY, Bribery.

THIRDLY, Extortion.

As to the firſt of theſe offences, *viz.* neglect, or breach of duty.

Sect. 1. I take it to be agreed, that in the grant of every office whatſoever, there is this condition implied by common reaſon, that the grantee ought to execute it diligently and faithfully; for ſince every office is inſtituted, not for the ſake of the officer, but for the good of ſome other, nothing can be more juſt, than that he who either neglects or refuſes to anſwer the end for which his office was ordained, ſhould give way to others who are both able and willing to take care of it. And therefore it is certain, that an officer is liable to a forfeiture of his office, not only for doing a thing directly contrary to the deſign of it, but alſo for neglecting to attend his duty at all uſual, proper, and convenient times and places, whereby any damage ſhall accrue to thoſe by or for whom he was made an officer.

Co. Lit. 233, 234. Vide the caſe of the King *v.* Bambridge, Mich. Term, 23. Geo. 3. on an information for miſfeaſance as accountant at the pay-office, Whitehall.

9. Co. 50. Co. Lit. 233. 2. Roll. 153. l. 30. 2. And. 119. Hard. 130. Modern 193. 1. Sid. 81. C. Car. 491. (a) 39. H. 6. 32. 20. Ed. 4, 5. 22. Aſſ. 54. 2. H. 7. 11. Plowden 379 L. Quin. Ed. 4. 27. 11. Ed. 4. 1.

And ſome have gone ſo far as to hold, that an office concerning the adminiſtration of juſtice, or the commonwealth, ſhall be forfeited for a bare non-uſer, whether any ſpecial damage be occaſioned thereby or not: but this opinion doth not appear to be warranted by any reſolution in point, and the (*a*) authorities which are cited to maintain it do not ſeem to come up to it.

However it cannot but be very reaſonable, that he who ſo far neglects a public office, as plainly to appear to take no manner of care of it, ſhould rather be immediately diſplaced, than the publick be in danger of ſuffering that damage, which cannot but be expected ſome time or other from his negligence.

Sect. 2. But it would be endleſs to enumerate all the particular inſtances, wherein an officer may be diſcharged or fined; and it alſo ſeems needleſs to endeavour it, becauſe they are generally ſo obvious to common ſenſe, as to need no explication; for what can be more plain, than that a (*b*) 9. Co. 50. gaoler deſerves to be diſcharged and fined, for (*b*) voluntarily ſuffering his priſoners to eſcape, or for (*c*) barbarouſly (*c*) Raym. 216. miſuſing them? What can be more evident, than that a (*d*) C. Jac. 426. (*d*) ſheriff is juſtly puniſhable for perſuading a jury to underprize goods in the execution of *fieri facias*, &c.? And See 4. Comyns' Digeſt, tit. Officer. therefore I ſhall leave the particular caſes of this nature to every man's own judgment, which from the conſideration of the general rules abovementioned, and the various circumſtances of every caſe, will eaſily diſcern how far each offence of this kind deſerves to be puniſhed.

CHAP-

CHAPTER THE SIXTY-SEVENTH.

Of BRIBERY.

BRIBERY in a ſtrict ſenſe is taken for a great miſpriſion of one in a judicial place taking any valuable thing whatſoever, except meat and drink of ſmall value, of any one who has to do before him any way, for doing his office, or by colour of his office, but of the king only. 3. Inſt. 145.

Sect. 2. But bribery in a large ſenſe is ſometimes taken for the receiving or offering of any undue reward, by or to any perſon whatſoever, whoſe ordinary profeſſion or buſineſs relates to the adminiſtration of public juſtice, in order to incline him to do a thing againſt the known rules of honeſty and integrity; for the law abhors any the leaſt tendency to corruption in thoſe who are any way concerned in its adminiſtration, and will not endure their taking a reward for the doing a thing which deſerves the ſevereſt of puniſhments (1). 3. Inſt. 149. Hobart 9. C. Jac. 65. 1. Levinz 40. 2. Salkeld 695. 11. Mod. 193.

(1) Therefore to bribe perſons, either by giving money or promiſes, to vote at elections of members of corporations, which are erected for the ſake of public government, is an offence for which an information will lie. 2. Ld. Ray. 1377. 1. Black. 383. 12. Mod. 314. But the Court will grant an information for this offence very cautiouſly, ſince the additional penalties by ſtatute. 1. Black. 380. Infra, ſect. 7.

Sect. 3. Alſo Bribery ſometimes ſignifies the taking or giving of a reward for offices of a public nature. And ſurely nothing can be more palpably prejudicial to the good of the publick, than to have places of the higheſt concernment, on the due execution whereof the happineſs of both king and people doth depend, diſpoſed of not to thoſe who are moſt able to execute them, but thoſe who are moſt able to pay for them; nor can any thing be a greater diſcouragement to induſtry and virtue, than to ſee thoſe places of truſt and honour, which ought to be the rewards of thoſe who by their induſtry and diligence have qualified themſelves for them, conferred on ſuch who have no other recommendation but that of being the higheſt bidders; neither can any thing be a greater temptation to officers to abuſe their power by bribery and extortion, and other acts of injuſtice, than the conſideration of the great expence they were at in gaining their places, and the neceſſity of ſometimes ſtraining a point to make their bargain anſwer their expectation. 3. Inſt. 148. Vide Noy 102. Moor 781.

For

For theſe reaſons, among many others, it is expreſsly enacted by 12. Rich. 2. c. 2. "That the chancellor, treaſurer, keeper of the privy ſeal, ſteward of the king's houſe, the king's chamberlain, clerk of the rolls, the juſtice of the one bench and of the other, barons of the exchequer, and all other that ſhall be called to ordain, name, or make juſtices of the peace, ſheriffs, eſcheators, cuſtomers, comptrollers, or any other officer or miniſter of the king, ſhall be firmly ſworn that they ſhall not ordain, name, or make any of the abovementioned officers for any gift or brocage, favour or affection, nor that none which ſueth by himſelf or by others, privily or openly, to be in any manner of office, ſhall be put in the ſame office, or in any other, but that they make all ſuch officers and miniſters of the beſt and moſt lawful men, and ſufficient to their eſtimation and knowledge."

By 4. Hen. 4. c. 5. "No ſheriff ſhall let his bailiwick to farm to any man, for the time that he occupieth ſuch office, &c."

Vide Noy 102. Moor 781.

By 5. & 6. Edw. 6. c. 16. it is alſo enacted, "That if any perſon ſhall bargain or ſell, or take any reward, or promiſe of any reward for any office, or the deputation of any office, any way concerning the king's revenue, or the keeping of his caſtles, or the adminiſtration or execution of juſtice (unleſs it be ſuch an office as had been uſually granted before the making of the ſaid act by the juſtices of the king's bench or common pleas, or by juſtices of aſſize), that then every ſuch perſon ſo bargaining or ſelling, or taking ſuch reward, or promiſe, &c. ſhall not only forfeit his right to ſuch office, or to the nomination thereof, but alſo every perſon who ſhall give any ſuch reward or promiſe, &c. ſhall be adjudged a diſabled perſon in law to have or enjoy ſuch office, &c."

In the conſtruction of this ſtatute of 5. & 6. Edw. 6. c. 16. the following points have been reſolved.

C. Jac. 269. 3. Inſt. 148. Salk. 468. 2. Lev. 289. 2. Ven. 187. 467.

Sect. 4. FIRST, That the offices of chancellor, regiſter, and commiſſary in eccleſiaſtical courts, are within the meaning of the ſtatute, inaſmuch as thoſe courts do not only determine matters which are brought before them merely *pro ſalute animæ*, but alſo have the deciſion of diſputes concerning the lawfulneſs of matrimony and legitimation of children, which touch the inheritance of the ſubjects, and alſo hold plea of legacies and tithes, &c. in which reſpects they are courts of juſtice; but it hath been adjudged, that no office in fee is within the ſtatute.

Sect.

Sect. 5. SECONDLY, That one who makes a contract for an office contrary to the purport of the ſaid ſtatute, is ſo far diſabled to hold the ſame, that he cannot at any time during his life be reſtored to a capacity of holding it by any grant or diſpenſation whatſoever. 2. Lev. 151. Hobart 75. Co. Lit. 234. C. Car. 301. C. Jac. 386.

THIRDLY, That a bond by a deputy of an office to pay a certain ſum at all events, is within the ſtatute, and conſequently totally void, though it alſo contain other conditions which, if they ſtood by themſelves, would be good; but not a bond to pay half the profits or a certain ſum out of the profits of the office for a deputation. Salk. 466. 468. 6. Mod. 234. 3. Co. 32. C. Eliz. 529, 530. 1. And. 107. 150.

FOURTHLY, That the ſtatute extends not to offices in the Plantations. Salkeld 411.

As to THE SECOND POINT, *viz.* How bribery is puniſhable.

Sect. 6. It is ſaid, that at common law, bribery in a judge, in relation to a cauſe depending before him, was looked upon as an offence of ſo heinous a nature, that it was ſometimes puniſhed as high treaſon before the 25. Edw. 3. and at this day it is certainly a very high offence, and puniſhable, not only with the forfeiture of the offender's office of juſtice, but alſo with fine and impriſonment, &c. 3. Inſt. 145. 1. Hale 262. 1. Leon. 295. C. Jac. 65. 1. Ruſh. Col. 31.

Sect. 7. Alſo all the other abovementioned kinds of bribery, taken in a large ſenſe, ſeem to be puniſhable with fine and impriſonment, &c. And in the time of king *James the Firſt*, the *earl of M.* lord high treaſurer of *England*, being impeached by the commons for refuſing to hear petitions referred to him by the king till he had received great bribes, and for other ſuch like miſdemeanors, was, by ſentence of the lords, deprived of all his offices, and diſabled to have any for the future, or to ſit in the parliament, and was fined fifty thouſand pounds, and impriſoned during the king's pleaſure (2). 3. Inſt. 148.

(2) This was the caſe of the Earl of Middleſex, who had been raiſed by Buckingham's intereſt from the rank of a London merchant to be lord high treaſurer of England, but having incurred the diſpleaſure of his patron, the favourite vowed revenge, and employed all his credit with the commons to procure the impeachment of the treaſurer; but the charges againſt him were neither numerous nor important, the whole meaſure very diſſatisfactory to the king, and the fine was remitted upon the acceſſion of Charles the Firſt. Parl. Hiſt. vol. vi. p. 191.

AN ATTEMPT to induce a man to adviſe the king, under the influence of a bribe, is criminal, though never carried into execution, 4. Burr. 2499. Offering money to a privy councillor to procure the reverſion of an office in the gift of the crown, has been adjudged a miſdemeanor, and puniſhable by information, Rex *v.* Vaughan.

† *Sect.*

† *Sect.* 8. And it is enacted by 7. & 8. Will. 3. c. 7. "That all contracts, promiſes, bonds, and ſecurities whatſoever, made or given to procure any return of any member to ſerve in parliament, or thing relating thereunto, ſhall be adjudged void; and that whoever makes or gives ſuch contract, ſecurity, promiſe, or bond, or any gift or reward, to procure a falſe or double return, ſhall forfeit 300l.; one third to the king; one third to the poor; one third to the informer; to be recovered by action or information (3)."

(3) But if it appears to be a void election, an action for this penalty is not maintainable. Ld. Ray. 904.

† *Sect.* 9. And it is further enacted by 2. Geo. 2. c. 24. "That if any perſon having or claiming a right to vote at any election for members of parliament, ſhall aſk, receive, or take any money, or other reward by way of gift, loan, or other device, or agree or contract for any money, gift, office, employment, or other reward whatſoever, to give his vote, or to refuſe or forbear to give his vote in any ſuch election, or if any perſon by himſelf, or any perſon employed by him, doth or ſhall by any gift or reward, or by any promiſe, agreement, or ſecurity for any gift or reward, corrupt or procure any perſon or perſons to give his or their vote or votes, or to forbear (*a*) to give his or their votes in any ſuch election, ſuch offender ſhall for every offence forfeit 500l. together with full coſts of ſuit, by action or information at *Weſtminſter*. And any perſon offending in any of the ſaid caſes, from and after judgment has been ſo obtained againſt him, or by ſummary action, or proſecution, or being any otherwiſe lawfully convicted thereof, ſhall be for ever diſabled to vote in any election for members of parliament, or to hold, exerciſe, or enjoy any office or franchiſe as a member of any city, borough, town corporate, or cinque port, as if he was dead."

3. Burr. 1270. 1354. 1. Black. 351, 356. 524. 541.

(*a*) It is not neceſſary that the party ſhould actually forbear in conſequence of the procurement. 3. Will. 292.

Sect. 10. But it is further enacted, "That if ſuch offender, within twelve months next after ſuch election, diſcover any other offender ſo that he be thereupon convicted, ſuch offender ſo diſcovering and not having been before that time convicted of any offence againſt this act, ſhall be indemnified and diſcharged from all penalties and diſabilities which he ſhall then have incurred by any offence againſt this act. Provided the proſecutions be commenced within two years, which commencement ſhall be (by 9. Geo. 2. c. 38.) the actual arreſt, ſummons, or ſervice of proceſs (4)."

(4) This ſtatute does not take away the common-law proceſs by indictment or information for bribery at elections for members of parliament. But as the offender would be equally liable to the penalties of the ſtatute, vide 1. Black. 524, the Court will

will not grant an information until the two years are expired, 3. Burr. 1335, except in particular cases, founded on particular reasons, 3. Burr. 1340. And it seems as if the Court would adjourn passing sentence on a conviction *by indictment*, on the defendant's entering into a recognizance to appear on the day when the time limited for bringing the *qui tam* action will expire, 3. Burr. 1359; but the Court will not, after that time has elapsed, prolong the judgment on account of the defendant's having indicted one of the witnesses upon whose testimony he was convicted, because being so much interested he could not be admitted a witness, 3. Burr. 1388. 1. Black. 404. Nor will they stay the judgment on the *postea* in an action for this injury, on affidavits that the defendant is a discoverer, 3. Wilson 35. Nor will they grant a new trial because a witness was *particeps criminis*, Sayer 290. But they will grant a new trial if, upon a special case, the jury have not found who was the first discoverer, although they find that the defendant produced a judgment by which it appeared that he had obtained a verdict against a third person upon this act; for it does not follow conclusively, that the person who obtains the verdict is necessarily the discoverer, 4. Burr. 2504. 2469. And it has been determined, that the person who makes an affidavit of the fact upon which another obtains a verdict, is the true discoverer, 4. Burr. 2286. And although a verdict is not a conviction until it be completed by a judgment, yet, after it is so completed, which the Court will grant leave to do, it will relate back to the time of the original discovery, *ibid.* 1. Black. 665. Vide also the Cricklade Case, one volume octavo, published by E. Brooke, 1785. also 22. Geo. 3. c. 31.

If the elector is bribed by a friend of the candidate, and exchanges a note to insure the vote, it is bribery within the act, although the elector voted for the opposite party, 3. Burr. 1235. 1. Black. 317. And so also is laying a wager with the voter that he does not vote for a particular candidate, Loft, 552. Vide also Allen *v.* Hearne, Mich. 26. Geo. 3. 1. Term Rep. 56. And by giving the elector money, he admits his right to vote, and shall not be permitted afterwards to controvert it, 3. Burr. 1586. Nor is it necessary that the candidate should have declared himself at the time the bribe was given, because asking a vote for him, under the title of the candidate's friend, makes him a candidate, Coomb *v.* Pitt, 5. Geo. 3. 1. Black. 523. Nor is it necessary that the person bribed should actually have a right to vote, 3. Wils. 35. But in an action the declaration must state *what* the defendant received or took as a reward, and whether money, or what particular species of reward, and not indefinitely and disjunctively, "that he took a gift or reward," and being upon a criminal charge, this defect is not helped by verdict, 4. Burr. 2471.

CHAPTER THE SIXTY-EIGHTH.

Of EXTORTION.

IN treating of Extortion, I ſhall conſider,

1. What ſhall be called Extortion.

2. How it ſhall be puniſhed.

As to THE FIRST POINT, *viz.* What ſhall be called Extortion.

Sect. 1. It is ſaid, that Extortion in a large ſenſe ſignifies any oppreſſion under colour of right; but that in a ſtrict ſenſe, it ſignifies the taking of money by any officer, by colour of his office, either where none at all is due, or not ſo much is due, or where it is not yet due.

Co. Lit. 368. 10. Co. 102. 3. Inſt. 149. C. Car. 438. 448. Hutton 53. 3. Inſt. 68. 1. Ray. 149. 11. Mod. 80. 137. Salkeld 382.

Sect. 2. It is ſaid, that at the common law, which was affirmed by the *ſtatute of Weſtminſter* 1. c. 26. it was extortion for any ſheriff or other miniſter of the king, whoſe office did any way concern the adminiſtration or execution of juſtice, or the common good of the ſubject, to take any reward whatſoever for doing his office, except what he received from the king. And ſurely this was a moſt excellent inſtitution, highly tending to promote the honour of the king, and the eaſe of the people, and hath been always thought to conduce ſo much to the public good, that all preſcriptions whatſoever which have been contrary to it, have been holden to be void; and upon this ground it hath been reſolved, that the preſcription by virtue whereof the clerk of the market claimed certain fees for the view and examination of all weights and meaſures, &c. was merely void.

2. Inſt. 209. Co. Lit. 368. 42. Ed. 3. 4, 5. 2. R. Abr. 266. Cro. Cir. 250. 4. Inſt. 274. Moor 523. 2. Inſt. 209.

Sect. 3. But it hath been holden, that the fee of twenty pence, commonly called the BAR-FEE, which hath been taken, time out of mind, by the ſheriff, of every priſoner who is acquitted, and alſo the fee of one penny, which was claimed by the coroner of every viſne, when he came before the juſtices in eyre, are not within the meaning of the ſtatute, becauſe they are not demanded by the ſheriff or coroner for doing any thing relating to their offices, but claimed as perquiſites of right belonging to them, whether they do any thing or not. But there ſeemeth to be no neceſſity for this diſtinction, for it cannot be intended to be the meaning of

21. H. 7. 17. 2. Inſt. 210. 2. Inſt. 176. S. P. C. 49.

27. H. 7. 17. Co. Lit. 368. of the ſtatute to reſtrain the courts of juſtice, in whoſe integrity the law always repoſes the higheſt confidence, from allowing reaſonable fees for the labour and attendance of their officers. For the chief danger of oppreſſion is from officers being left at their liberty to ſet their own rates on their labour, and make their own demands; but there cannot be ſo much fear of theſe abuſes while they are reſtrained to known and ſtated fees, ſettled by the diſcretion of the courts, which will not ſuffer them to be exceeded without the higheſt reſentment (1).

(1) For the fees allowed to the ſeveral officers, vide 3. Com. Dig. 323, 324. 1. Modern 5. 11. Modern 89. Ld. Ray. 4. 103. 9. and 10. Will. 3. c. 41. 29. Eliz. c. 4. 3. Jac. 1. c. 7. 10. and 11. Will. 3. c. 23. ſ. 8. 3. Geo. 1. c. 15. 17. Geo. 3. c. 26. ſ. 6. Cro. Cir. 253.

Sect. 4. Alſo it having been found by experience, that generally it is vain to expect that any officers who depend upon a known fixed ſalary, without having any immediate benefit from any particular inſtances of their duty, ſhould be ſo ready in undertaking, or diligent in executing them, as they would be, if they were to have a preſent advantage from them, it hath been thought expedient to permit them to take certain fees in many caſes, but it is certain that they are guilty of extortion if they take any thing more. Alſo it hath been reſolved, that a promiſe to pay them money for the doing of a thing which the law will not ſuffer them to take any thing for, is merely void, however freely and voluntarily it may appear to have been made; for if once it ſhould be allowed that ſuch promiſes could maintain an action, the people would quickly be given to underſtand how kindly they would be taken, and happy would that man be who could have his buſineſs well done without them (2).

3. Inſt. 149. 2. Inſt 210. Co. Lit. 368. 1. R. Abr. 6. 26. 41. 1. Roll. 313. Noy 76. 1. Jones 65. C. Eliz. 654. Moor 468. 523. C. Jac. 103.

(2) It is extortion to oblige an executor to prove a will in the biſhop's court, and to take fees thereon, knowing the ſame to have been proved in the prerogative court, Strange 73. Or in a ſheriff's officer to admit a priſoner to bail, upon an agreement to receive a certain ſum when the priſoner ſhould pay to a third perſon another ſum of money, 2. Burr. 924. To arreſt a man in order to obtain a releaſe from him, 8. Mod. 189. In a gaoler to obtain money from his priſoner by any colourable means, 8. Mod. 226. Stra. 575. Or in a church-warden *colore officii*, 1. Sid. 307. In a miller, if he takes more for toll than is due by cuſtom, Ld. Ray. 149. Or a commiſſary for abſolution, 3. Leo. 268. Or a ferryman more for his ferry, 4. Mod. 101. Or to ſeize upon the place where a fair is held, and by building ſtalls, to force an exorbitant price for them, Ld. Ray. 150. Or in an under ſheriff to refuſe to execute proceſs till his fees are paid, Salk. 330. Or to take a bond for his fee before execution is ſued out, Hutt. 53. Or for a coroner to refuſe his view until his fees be paid, 3. Inſt. 149.

Sect.

As to THE SECOND POINT, *viz.* How Extortion ſhall be puniſhed.

11. Mod. 82.
2. R. Abr. 32, 33. 75.
Raym. 315.
2. Inſt. 209.
3. Leon. 268.
3. Edw. 1. c. 26.
1. Strange 74.

Sect. 5. There is no doubt, but that at common law it is ſeverely puniſhable at the king's ſuit, by fine and impriſonment; and alſo by a removal from the office, in the execution whereof it was committed.

Sect. 6. Alſo extortion in ſheriffs, eſcheators, bailiffs, gaoler, the king's clerk of the market, and other inferior miniſters and officers of the king, whoſe offices do any way concern the adminiſtration or execution of juſtice, or the common good of the ſubject, or for the king's ſervice, hath a farther additional puniſhment by the abovementioned *ſtatute of Weſtminſter*, by which it is enacted, "That no ſheriff, "nor other king's officer, ſhall take any reward to do his "office, but ſhall be paid of that which they take of the "king, and that he who ſo doth, ſhall yield twice as much, "and ſhall be puniſhed at the king's pleaſure (3)."

(3) And an action lies to recover the double value, 3. Com. Dig. 323. But the indictment which may be brought at the ſeſſions, Str. 73. or information, muſt ſtate the fact particularly, 3. Leo. 268. 25. Edw. 3. ſt. 3. c. 9. 11. Mod. 80. It muſt alſo ſpecify the time when the offence was committed, 4. Mod. 101. 103. But although it be omitted to be ſtated for what the thing extorted was taken, yet it is good after verdict, Sid. 91. And, in general, the king's bench will oblige the party to demur to a defective indictment for extortion, 5. Mod. 13. And whatever may be the ſum, if there is proof only of a ſhilling taken, the defendant is guilty; for the taking is the offence, and not the contract, Ld. Ray. 149. And he alſo who aſſiſts is equally guilty, for there are no acceſſaries in extortion, Str. 73. Extortion may be laid in any county, by the 31. Eliz. c. 5. Sed vide 2. Hawkins, ch. 26. ſ. 50.

CHAPTER THE SIXTY-NINTH.

OF PERJURY.

OFFENCES under the degree of capital, more immediately againſt the ſubject, not amounting to an actual diſturbance of the peace, which may be committed by private perſons, without any relation to an office, are,

1. Such as are infamous, and groſly ſcandalous, proceeding from principles of downright diſhoneſty, malice, or faction.

2. Such as are of an inferior nature, and neither infamous, nor groſly ſcandalous.

Thoſe of the firſt kind ſeem to be reducible to the following heads:

1. Perjury, and ſubornation of Perjury.

2. Forgery.

3. Cheats.

4. Conſpiracy.

5. Keeping of a bawdy-houſe.

6. Libels.

AND FIRST of *perjury*, and *ſubornation of perjury*,

Of both which there are two kinds.

1. By the common law.

2. By ſtatute.

PERJURY, by the *common law*, ſeemeth to be a wilful falſe oath, by one who being lawfully required to depoſe the truth in any proceeding in a courſe of juſtice, ſwears abſolutely in a matter of ſome conſequence to the point in queſtion, whether he be believed or not. Com. Dig. tit. Juſ. of Peace, B. 102.

For the better underſtanding whereof, I ſhall conſider the following particulars:

1. How far this offence muſt be wilful.

2. In what kind of proceedings it may be committed.

3. In what caſes an oath may be ſaid to be ſo far lawfully adminiſtered, that he who takes it may become guilty of perjury.

4. In what kind of oaths perjury may be committed.

5. How far the oath muſt be falſe.

6. Whether the matter of the oath muſt be abſolute.

7. How far things ſworn ought to be material to the point in queſtion.

8. How far the falſe oath muſt be credited.

As to THE FIRST POINT, *viz.* How far this offence muſt be wilful.

5. Mod. 350. 10. Mod. 195. Salkeld 513. 3. Inſt. 163. Loft. 773.

Sect. 2. It ſeemeth that no one ought to be found guilty thereof without clear proof, that the falſe oath alledged againſt him was taken with ſome degree of deliberation; for if upon the whole circumſtances of the caſe it ſhall appear probable, that it was owing rather to the weakneſs than perverſeneſs of the party, as where it was occaſioned by ſurpriſe, or inadvertency, or a miſtake of the true ſtate of the queſtion, it cannot but be hard to make it amount to voluntary and corrupt perjury, which is of all crimes whatſoever the moſt infamous and deteſtable.

As to THE SECOND POINT, *viz.* In what kind of proceedings this offence may be committed.

C. Eliz. 168, 169. Noy 128. 2. R. Abr. 257. Hobart 62.

Sect. 3. It ſeems to be clearly agreed, that all ſuch falſe oaths as are taken before thoſe who are any ways intruſted with the adminiſtration of public juſtice, in relation to any matter before them in debate, are properly perjuries; and it ſeems to have been holden by ſome, that all ſuch falſe oaths as are taken before perſons authoriſed by the king to examine witneſſes in relation to any matter whatſoever, wherein his honour or intereſt are concerned, are alſo puniſhable as perjuries. And ſurely there can be no offence of this nature which will not juſtly deſerve a public proſecution, inaſmuch as if it ſhould once prevail, it would make it impoſſible to have

have any law whatſoever duly executed, and expoſe the lives, liberties, and properties, of the moſt innocent to the mercy of the greateſt villains. And therefore it hath been holden, that not only ſuch perſons are indictable for perjury, who take a falſe oath in a court of record, upon an iſſue therein joined, but alſo all thoſe who forſwear themſelves in a matter judicially depending before any court of *(a)* equity, or ſpiritual *(b)* court, or any other *(c)* lawful court, whether the proceedings therein be of record or not *(d)*, or whether they concern the intereſt of the king or ſubject. And it is ſaid to be no way material, whether ſuch falſe oath be taken in the face of a court, or perſons authoriſed by it to examine a matter, the knowledge whereof is neceſſary for the right determination of a cauſe; and *(e)* therefore, that a falſe oath before a ſheriff, upon a writ of enquiry of damages, is as much puniſhable as if it were taken before the Court on a trial of the cauſe.

(a) C. Eliz. 907. Skinner 327. 1. Sid. 418. 1. R. Abr. 40. 5. Mod. 348.
(b) C. Eliz. 185. 609. 2. Roll. 410. 1. R. Abr. 40. 1. Leon. 131. Con. Dy. 243.
(c) 2. R. Abr. 257. 1. R. Abr. 41. Winch 3. 5. Mod. 348. Hutt. 34. 1. Mod. 55. Yelv. 27. C. Eliz. 297. 342. 348. 905. (d) 12. Co. 101. C. Jac. 212. Con. C. Jac. 120. 3. Inſt. 164. Vide ſect. 18. (e) 1. R. Abr. 39.

Alſo it ſeemeth, that any falſe oath is puniſhable as perjury, which tends to miſlead the Court in any of their proceedings relating to a matter judicially before them, though it no way affect the principal judgment which is to be given in the cauſe; as where a *(f)* perſon who offers himſelf to be bail for another knowingly and wilfully ſwears that his ſubſtance is greater than it is. Alſo it hath been reſolved, that not only ſuch oaths as are taken upon judicial proceedings, but alſo all ſuch as any way tend to abuſe the adminiſtration of juſtice, are properly perjuries; as where one *(g)* takes a falſe oath before a juſtice of peace, in order to induce him to compel another to find ſureties for the peace, &c. or where a perſon forſwears himſelf *(h)* before commiſſioners appointed by the king to inquire of the forfeitures of his tenants eſtates, &c. whereby he makes them liable to be ſeized by exchequer proceſs. Alſo it hath been ſaid, that a falſe oath is puniſhable as perjury, in ſome caſes, wherein the king's honour or intereſt is concerned, though it do not concern the adminiſtration of juſtice; as where one ſwears a falſe oath concerning the poſſeſſion of lands, before commiſſioners appointed by the king to inquire of ſuch perſons whoſe titles to the lands in their poſſeſſion are defective, and want the ſupply of the king's patents: and this is certainly an offence of a very heinous nature *(i)*, tending not only to fruſtrate the king's gracious purpoſe, but to abuſe his goodneſs by inducing him to grant his patents to thoſe who are out of poſſeſſion, and no way within the intent of the commiſſion, which inſtead of quieting the poſſeſſions of the ſubjects, cannot but end in the greateſt diſturbance of them.

(f) C. Car. 146.
(g) 2. Roll. 410. 2. R. Abr. 77.
(h) Noy 100. Moor 627.
(i) Hobart 61

Con. 1. Ven. 369, 370. 3. R. Abr. 257. 2. R. Abr. 257. 3. Inſt. 166.

However it ſeemeth certain, that no oath whatſoever in a mere private matter, howſoever wilful or malicious it may be, is puniſhable as perjury in a criminal proſecution; for private injuries are left to be redreſſed by private actions; and upon this ground it hath been holden, that a falſe oath taken by one upon the making of a bargain, that the thing ſold is his own, is not puniſhable as perjury. Alſo from what hath been ſaid it appears, that the notion of perjury is confined to ſuch public oaths only as affirm or deny ſome matter of fact, contrary to the knowledge of the party; and therefore, that it doth not extend to any *promiſſory oaths* whatſoever; from which it clearly follows, that no officer, public or private, who neglects to execute his office in purſuance of his oath, or acts contrary to the purport of it, is indictable for perjury in reſpect of ſuch oath; yet it is certain, that his offence is highly aggravated by being contrary to his oath, and therefore, that he is liable to the ſeverer fine on that account.

As to THE THIRD POINT, *viz.* In what caſes an oath may be ſaid to be ſo far lawfully adminiſtered, that he who takes it may become guilty of perjury by ſwearing falſly.

Sect. 4. It ſeemeth clear, that no oath whatſoever taken before (*a*) perſons acting merely in a private (*b*) capacity, or (*c*) before thoſe who take upon them to adminiſter oaths of a public nature, without legal authority for their ſo doing, or (*d*) before thoſe who are legally authorized to adminiſter ſome kinds of oaths, but not thoſe which happen to be taken before them, or even (*e*) before thoſe who take upon them to adminiſter juſtice by virtue of an authority ſeemingly colourable, but in truth unwarranted and merely void, can ever amount to perjuries in the eye of the law, becauſe they are of no manner of force, but are altogether idle (1).

(*a*) 2. R. Abr. 257. 3. Inſt. 165. Yelv. 72. (*b*) Cro. El. 169. (*c*) 1. Sid. 274. 2. R. Abr. 257. Latch. 38. 132. (*d*) Yelv. 111. 3. Inſt. 166. See 4. Inſt. 97. 29. Car. 2. 25. 2. Roll. 427. 4. Inſt. 278. See Dougl. 156. (*e*) Sid. 148.

(1) *Qu.* If any magiſtrate is juſtifiable in taking a voluntary affidavit in any extrajudicial matter. Vide 15. Geo. 3. c. 39. 3. Burn, 244.

And from the ſame ground it ſeemeth alſo clearly to follow, that no falſe oath in an affidavit made before perſons falſly pretending to be authorized by a court of juſtice to take affidavits in relation to matters depending before ſuch court, can properly be called perjury, becauſe no affidavit is any way regarded, unleſs it be made before perſons legally intruſted with a power to take it, as being both of ſufficient ability to aſk all proper queſtions of the party who ſhall make ſuch affidavit, and alſo of ſuch integrity as not to ſuffer any thing to be inſerted therein, to the truth whereof the party

party hath not ſworn. And though it may be ſaid, that an affidavit taken before perſons falſly pretending to be commiſſioned for ſuch purpoſe by the courts of juſtice, doth directly tend to impoſe upon ſuch courts, and may poſſibly happen through ſurprize to be read, and may alſo in its own nature be altogether as heinous as if it had been made before perſons regularly empowered to take it; yet inaſmuch as it is of itſelf of no manner of validity, and is no otherwiſe regarded, than as it hath the appearance of being ſworn before perſons legally commiſſioned, without which it would have no manner of credit, it ſeemeth that offences of this nature are moſt properly puniſhed by ſeverely chaſtiſing thoſe who uſurp ſuch an authority of adminiſtering of oaths without any legal warrant.

4. Comm. 157. 3. Inſt. 165.

However, it hath been adjudged, that a falſe oath taken before perſons, who, having been commiſſioned to examine witneſſes, happen to proceed after the demiſe of the king who gave them their commiſſion, and before notice thereof, may be puniſhed as perjury; for it would be of the utmoſt ill conſequence to make ſuch proceedings void; and therefore, though all ſuch commiſſions be in ſtrictneſs legally determined by the demiſe of the king, who gave them, without any notice; yet for the neceſſity of the caſe, whatever is done under them before ſuch notice, muſt be ſuffered to ſtand good; for otherwiſe the moſt innocent and moſt deſerving ſubjects would be unavoidably expoſed to numberleſs proſecutions for doing their duties, without any colour of a fault. And *Quære*, Whether a perjury in a court whoſe proceedings are afterwards reverſed by error, may not ſtill be puniſhed as perjury, notwithſtanding ſuch reverſal (2).

C. Car. 97, 98, 99.

1. Ven. 181.

(2) In the caſe of the King *v.* Alford, Summer aſſizes for Somerſet 1776, the defendant was indicted for perjury in a cauſe tried at the aſſizes before Mr. Juſtice Willes. The caption of the indictment recited the names of the Judges who were in the commiſſion, and charged, "That at the ſaid trial, before the Hon. Edward Willes, *one* "*of the Juſtices* aforeſaid, the defendant took his corporal oath, &c. he the ſaid Ed- "ward Willes then and there *having competent authority to adminiſter an oath* to the "defendant in that behalf," the priſoner was found guilty. But Mr. Baron Eyre, who tried the cauſe, doubted of the authority of *one commiſſioner* to adminiſter the oath; the record of *niſi prius*, which was read in evidence, ſtating, in the uſual form, that the trial was before both the Judges; and therefore another doubt aroſe whether the evidence maintained the indictment. On reference, the firſt Hilary Term 1777, the Judges were unanimous, that either of the Judges may adminiſter the oath; conſequently there was no variance, and the conviction good. Caſes in Cro. Law, 137.

As to THE FOURTH POINT, *viz.* In what kind of oaths perjury may be committed.

Sect. 5. It ſeemeth clear, that a man may be in danger of being guilty thereof, not only in reſpect of a falſe oath taken by him as a witneſs for another, but alſo in reſpect of

a falſe oath taken by him in his own cauſe, either in an anſwer to queſtions put to him in a court of (*a*) law or (*b*) equity, having power to purge him upon oath concerning his knowledge of the matters in diſpute, or in his (*c*) affidavit concerning ſome collateral matter, wherein the parties own oaths are allowed to be taken. But it ſeems, that a juror who gives a verdict contrary to manifeſt evidence, is not properly guilty of perjury within the abovementioned deſcription, becauſe he is not ſworn to depoſe the truth, but only to give a true judgment upon the depoſition of others, and in many caſes is not puniſhable at all *in foro humano*, as ſhall be ſet forth more at large in the chapter of Conſpiracy.

(*a*) 1. R. Abr. 40. 83. C. Eliz. 609.
(*b*) 1. Leon. 127. C. Eliz. 135. 905. 1. R. Abr. 40. 69. 1. Sid. 244.
(*c*) 1. Roll. 79. Noy 128. 5. Mod. 348. Moor 656. 2. Keble 452.

2. R. Abr. 77.

As to THE FIFTH POINT, *viz.* How far the matter of the oath which may amount to perjury, muſt be falſe.

Sect. 6. It (*d*) is ſaid not to be material whether the fact which is ſworn be in itſelf true or falſe; for howſoever the thing ſworn may happen to prove agreeable to the truth, yet if it were not known to be ſo by him who ſwears to it, his offence is altogether as great as if it had been falſe, inaſmuch as he wilfully ſwears, that he knows a thing to be true, which at the ſame time he knows nothing of, and impudently endeavours to induce thoſe before whom he ſwears to proceed upon the credit of a depoſition, which any ſtranger might make as well as he.

(*d*) Palm. 294. Hetley 97. 2. R. Abr. 77. 3. Inſt. 166. Con. 3. Mod. 222.

As to THE SIXTH POINT, *viz.* How far the oath muſt be abſolute.

Sect. 7. It is ſaid, that no oath ſhall amount to perjury unleſs it be ſworn abſolutely and directly; and therefore, that he who ſwears a thing according as he *thinks*, *remembers*, or *believes*, cannot in reſpect of ſuch an oath be found guilty of perjury (*e*).

3. Inſt. 166.

(*a*) In Miller's Caſe, 3. Wilſ. 427. 2. Bl. Rep. 881, Lord Chief Juſtice De Grey ſaid, it was a miſtake mankind had fallen into, that a perſon cannot be convicted of perjury, who ſwears that he *thinks* or *believes* a fact to be true, for that he certainly may, and it only renders the proof of it more difficult. And in the caſe of the King *v.* Pedley, B. R. Trin. Term 1784, this opinion was confirmed by Lord Mansfield, Caſes in Crown Law 269. This queſtion was alſo agitated in the common pleas, Mich. Term 1780, by Mr. Serjeant Walker, when Lord Loughborough and all the other Judges were unanimous, that *belief* was to be conſidered as an abſolute term, and that an indictment might be ſupported upon it.

As

As to THE SEVENTH POINT, *viz.* How far the thing ſworn ought to be material to the point in queſtion.

Sect. 8. It ſeemeth clear, that if the oath for which a man is indicted of perjury, be wholly foreign from the purpoſe, or altogether immaterial, and neither any way pertinent to the matter in queſtion, nor tending to aggravate or extenuate the damages, nor likely to induce the jury to give a readier credit to the ſubſtantial part of the evidence, it cannot amount to perjury, becauſe it is merely idle and inſignificant: as if upon a trial, in which the queſtion is whether ſuch a one was *compos* or not, a witneſs introduces his evidence by giving a hiſtory of a journey which he took to ſee the party, and happens to ſwear falſely in relation to ſome of the circumſtances of the journey. Alſo it hath been adjudged, that where a witneſs being aſked by a Judge whether *A.* brought a certain number of ſheep from one town to another all together, anſwered, that he did ſo, where in truth *A.* did not bring them all together, but part at one time and part at another, yet ſuch witneſs was not guilty of perjury, becauſe the ſubſtance of the queſtion was, whether *A.* did bring them at all or not, and that manner of bringing them was only a circumſtance. And upon the ſame ground it is ſaid to have been adjudged, that where a witneſs being aſked, whether ſuch a ſum of money were paid for two things in controverſy between the parties, anſwered, that it was, where in truth it was paid only for one of them by agreement, ſuch witneſs ought not to be puniſhed for perjury; becauſe as the caſe was, it was no way material whether it were paid for one or both. Alſo it is ſaid to have been reſolved, that a witneſs who ſwore that one drew his dagger and beat and wounded *J. S.* where in truth he beat him with a ſtaff, was not guilty of perjury, becauſe the beating only was material.

1. Freem. 506. 1. Sid. 274. Vide inf. f. 22. Aleyn 79. 1. R. Abr. 141. 78. C. Eliz. 500. Salkeld 514. Noy 36. 2. Roll. 145. C. Car. 521. Hobart 53. Carth. 422. 5. Mod. 345. 348. 3. Inſt. 164

2. Roll. 41. 369.

2. Roll. 42.

Hetley 97.

But perhaps in all theſe caſes it ought to be intended, that the queſtion was put in ſuch a manner, that the witneſs might reaſonably apprehend that the ſole deſign of putting it was to be informed of the ſubſtantial part of it, which might induce him through inadvertency to take no notice of the circumſtantial part, and give a general anſwer to the ſubſtantial; for otherwiſe, if it appear plainly, that the ſcope of the queſtion was to ſift him as to his knowledge of the ſubſtance, by examining him ſtrictly concerning the circumſtances, and he give a particular and diſtinct account of the circumſtances, which afterwards appears to be falſe; ſurely he cannot but be guilty of perjury, inaſmuch as nothing can be more apt to incline a jury to give credit to the ſubſtantial part of a man's evidence, than his appearing to have

have an exact and particular knowledge of all the circumſtances relating to it. And upon theſe grounds I cannot but think the opinion of thoſe judges very reaſonable, who held, that a witneſs was guilty of perjury, who in an action of treſpaſs for breaking the plaintiff's cloſe, and ſpoiling it with ſheep, depoſed that he ſaw thirty or forty ſheep in the ſaid cloſe, and that he knew them to be the defendant's, becauſe they were marked with ſuch a mark, which he knew to be the defendant's mark, where in truth the defendant never uſed ſuch a mark; for the giving ſuch a ſpecial reaſon for his remembrance could not but make his teſtimony more credible than it would have been without it; and though it ſignified nothing to the merits of the cauſe, whether the ſheep had any mark at all or not, yet inaſmuch as the aſſigning ſuch a circumſtance in a thing immaterial had ſuch a direct tendency to corroborate the evidence concerning what was moſt material, and conſequently was equally prejudicial to the party, and equally criminal in its own nature, and equally tending to abuſe the adminiſtration of juſtice, as if the matter ſworn had been the very point in iſſue, there doth not ſeem to be any reaſon why it ſhould not be equally puniſhable. But I cannot find this matter any where thoroughly ſettled or debated, and therefore ſhall leave it to every man's own judgment, which, from the conſideration of the circumſtances of each particular caſe, may generally, without any great difficulty, diſcern whether the matter in which perjury is aſſigned, were wholly impertinent, idle, and inſignificant, or not, which ſeems to be the beſt rule for determining whether it be puniſhable as perjury or not.

2. Roll. 368. Palmer 382.

Lucas 195.

But it is ſaid in *Siderfin*, ſpeaking as I ſuppoſe of an anſwer in chancery, that a man may be guilty of perjury at the common law by ſwearing a thing not material. But ſurely this ought not to be underſtood in ſo great a latitude, as if it were meant that every falſity in ſuch an anſwer muſt needs be perjury, howſoever foreign, circumſtantial, and trivial the point wherein it is aſſigned may be, which is directly contrary to what ſeems to be clearly taken for granted in other books. And therefore, perhaps, where it is ſaid that a man may be guilty of perjury in a thing not material, no more may be meant, but that he may be as well guilty thereof by anſwering to a matter not charged in the bill, as by anſwering to the matters therein contained, which may alone be ſaid to be material, becauſe the defendant is not obliged in his anſwer to take notice of any thing elſe. Or elſe, perhaps, the meaning may be, that in a proſecution for perjury at common law, ſetting forth a falſe oath in ſuch an anſwer relating to the thing ſaid to be in variance, the falſity

1. Siderfin 274.

falſity ſhall be intended *prima facie* to have been ſome way material in the cauſe, unleſs the contrary be proved by the other ſide: whereas in all proſecutions upon the ſtatute, it is neceſſary expreſsly to ſhew in what manner the falſe oath is material to the cauſe in queſtion, becauſe that ſtatute, extending only to ſuch perjuries whereby ſome perſon is grieved, cannot maintain a proſecution which does not bring the caſe within the purview of it, by ſhewing that ſome one was grieved by the injury complained of, which he could not be, unleſs the thing ſworn were ſome way material. However, it ſeemeth to be clear, that a man may as well be guilty of perjury by a falſe oath tending to extenuate or aggravate the damages, as by an oath which is direct to the fact in iſſue. (3)

Vide inf. f. 23.

C. Jac. 212. 12. Co. 101. 2. Leon. 198.

(3) It is not neceſſary that it appear to what degree the point in which a man is perjured was material to the iſſue; for if it is but circumſtantially material, it will be perjury. Ld. Raymond 258. Much leſs is it neceſſary that the evidence be ſufficient for the plaintiff to recover upon; for in the nature of the thing an evidence may be very material, and yet it may not be full enough to prove directly the point in queſtion. Ld. Raymond 889. And it is incumbent on the proſecutor to prove the materiality of the perjury. O. B. 1784. p. 305.

As to THE EIGHTH POINT, *viz.* How far the falſe oath muſt be credited.

Sect. 9. It hath been holden not to be material upon an indictment of perjury at common law, whether the falſe oath were at all credited (4), or whether the party in whoſe prejudice it was intended, were in the event any way aggrieved by it or not, inaſmuch as this is not a proſecution grounded on the damage to the party, but on the abuſe of *publick juſtice.*

3. Leon. 230. 2. Leon. 211.

(4) But on the trial the oath will be taken as true, until it be diſproved; and therefore to convict a man of perjury, a probable, credible witneſs is not enough; for the evidence muſt be ſtrong, clear, and more numerous on the part of the proſecution than the evidence on the other ſide. Therefore the law will not permit a man to be convicted of perjury, unleſs there are two witneſſes at leaſt. Haylock's caſe, O. B. 1786, p. 812. 10. Mod. 195. Nor ſhall the party prejudiced by the perjury be admitted as a witneſs to prove it. L. Raymond 396.

II. SUBORNATION of perjury by the common law, ſeems to be an offence in procuring a man to take a falſe oath amounting to perjury, who actually takes ſuch oath.

1. R. Abr. 41. 57. 79. Yelv. 72. C. Jac. f. 58. C. Car. 337.

Sect. 10. But it ſeemeth clear, that if the perſon incited to take ſuch an oath do not actually take it, the perſon by whom he was ſo incited is not guilty of ſubornation of perjury; yet it is certain that he is liable to be puniſhed, not only by fine, but alſo by infamous corporal puniſhment.

2. Keb. 399. 3. Mod. 121. Farreſl. 101. Vide p. 328. for a further puniſhment inflicted by 2. Geo. 2. c. 25. Vide alſo p. 335. ſect. 29.

Sect.

Of perjury by 5. Eliz. c. 9.

Thus far of perjury, and ſubornation of perjury by the common law.

And now I ſhall proceed to examine in what manner theſe offences are reſtrained by ſtatute.

Sect. 11. As to which it is to be obſerved, that it is enacted by 5. Eliz. c. 9. "That whoever ſhall unlawfully and "corruptly procure any witneſs or witneſſes by letters, re- "wards, promiſes, or by any other ſiniſter and unlawful la- "bour or means whatſoever, to commit any wilful and cor- "rupt perjury, in any matter or cauſe whatſoever, depend- "ing in ſuit and variance, by any writ, action, bill, com- "plaint, or information, in any wiſe concerning any lands, "tenements, or hereditaments, or goods, chattels, debts or "damages, in any of the king's courts of Chancery, White- "hall, or elſewhere, within any of the king's dominions of "*England* or *Wales*, or the marches of the ſame, where any "perſon or perſons ſhall have authority by virtue of the "king's commiſſion, patent or writ, to hold plea of land, or "to examine, hear, or determine, any title of lands, or any "matter or witneſſes concerning the title, right, or intereſts "of any lands or tenements, or hereditaments, or in any "of the king's courts of record, or in any leet view or "frank-pledge or law-day, ancient demeſne-court, hundred- "court, court-baron, or in the court or courts of Stannary "in the counties of Devon or Cornwall, or ſhall unlawfully "and corruptly procure or ſuborn any witneſs or witneſſes, "who ſhall be ſworn to teſtify *in perpetuam rei memoriam*, "ſhall for ſuch offence, being thereof lawfully convicted "or attainted, forfeit the ſum of forty pounds."

See the caſe Rex v. Thoroughgood, 8. Mod. 179.

By 5. Eliz. c. 9. "If any ſuch offender ſo being convicted "or attainted, ſhall not have any goods or chattels, lands or "tenements, to the value of forty pounds, that then every "ſuch perſon ſhall ſuffer impriſonment by the ſpace of one "half year without bail or mainprize, and ſtand upon the "pillory the ſpace of one whole hour, in ſome market- "town next adjoining to the place where the offence "was committed, in open market there, or in the market- "town itſelf where the offence was committed."

Sect. 12. By 5. Eliz. c. 9. ſ. 5. "No perſon being ſo "convicted or attainted, ſhall from thenceforth be received "as a witneſs in any court of record, in any of the king's "dominions of England, Wales, or the marches of the "ſame, till ſuch judgment againſt him ſhall be reverſed by "attaint, or otherwiſe; and that upon every ſuch reverſal, "the party grieved ſhall recover damages againſt the party "who

See 1. Sid. 216.

" who did procure the ſaid judgment ſo reverſed to be " firſt given, &c."

Sect. 13. By 5. Eliz. c. 9. ſ. 6. " If any perſon or " perſons ſhall either by the ſubornation, unlawful pro- " curement, ſiniſter perſuaſion, or means of any other, or " by their own act, conſent, or agreement, wilfully and " corruptly commit any manner of wilful perjury, by his " or their depoſition, in any of the courts before men- " tioned, or being examined *ad perpetuam rei memoriam*, " that then every ſuch offender being duly convicted or " attainted, ſhall forfeit twenty pounds, and have impri- " ſonment by the ſpace of ſix months without bail or " mainprize; and the oath of ſuch an offender ſhall not " from thenceforth be received in any court of record in " England or Wales, until ſuch judgment ſhall be reverſed, " &c. on which reverſal the party grieved ſhall recover da- " mages in the manner before mentioned."

By 5. Eliz. c. 9. ſ. 7. " If ſuch offender ſhall not have " goods or chattels to the value of twenty pounds, that " then ſuch perſon ſhall be ſet on the pillory in ſome " market-place within the ſhire, city, or borough, where " the offence ſhall be committed by the ſheriff or his mi- " niſters, if it ſhall fortune to be without any city or " town corporate, and if it happen to be within any ſuch " city or town corporate, then by the head officer of ſuch " city, &c. where he ſhall have both ears nailed, &c."

Sect. 14. By 5. Eliz. c. 9. ſ. 8, 9. " One moiety of the " ſaid forfeiture ſhall be to the king, and the other moiety " to ſuch perſon as ſhall be grieved, hindered, or moleſted, by " reaſon of any of the offences before mentioned, that will " ſue for the ſame, &c. and that as well the Judge and Judges " of every ſuch of the ſaid courts where any ſuch ſuits ſhall " be, and whereupon any ſuch perjury ſhall be committed, " as alſo the Juſtices of aſſize and gaol delivery, and juſtices " of the peace at their quarter ſeſſions (5), both within the " liberties and without, may enquire of, hear, and deter- " mine all offences againſt the ſaid act."

(5) Proſecutions upon this ſtatute being more difficult than by indictment at common law, are very ſeldom brought, eſpecially at the ſeſſions; and at common law juſtices of the peace have no juriſdiction over the offence. 2. Hawk. c. 8. ſ. 38. Strange 1088.—The ſafer and moſt uſual mode therefore is by indictment at the aſſizes, or in the King's Bench. 3. Burn 294.

Sect. 15. But by 5. Eliz. c. 9. ſ. 11. it is provided, " That " the ſaid act ſhall no way extend to any ſpiritual or eccle- " ſiaſtical court, but that every ſuch offender as ſhall offend

" in

" in form as aforeſaid, ſhall be puniſhed by ſuch uſual and " ordinary laws as are uſed in the ſaid courts."

Puniſhment of perjury.

Sect. 16. By 5. Eliz. c. 9. ſ. 13. it is alſo provided, " That " the ſaid ſtatute ſhall not reſtrain the authority of any " Judge, having abſolute power to puniſh perjury before the " making thereof, but that every ſuch Judge may proceed in " the puniſhment of all offences, puniſhable before the mak- " ing of the ſaid ſtatute, in ſuch wiſe as they might have " done, and uſed to do, to all purpoſes, ſo that they ſet not " upon the offender leſs puniſhment than is contained in the " ſaid act." From whence it ſeemeth undoubtedly to follow, that the court of King's Bench, &c. proceeding upon an indictment, or information of perjury, or ſubornation of perjury at common law, may not only ſet a diſcretionary fine on the offender, but alſo condemn him to the pillory, without making any enquiry concerning the value of his land or goods.

Offenders may be tranſported. Vide infra, ſect. 29. for the puniſhment of perſons convicted of perjury, &c. acting as attornies.

† And by 2. Geo. 2. c. 25. made perpetual by 9. Geo. 2. c. 8. " Beſides the puniſhment already to be inflicted by " law for ſo great crimes, it ſhall be lawful for the Court " or Judge before whom any perſon ſhall be convicted of " wilful and corrupt perjury, or ſubornation of perjury, " according to the laws now in being, to order ſuch perſon " to be ſent to ſome houſe of correction within the ſame " county, for a time not exceeding ſeven years, there to be " kept to hard labour during all the ſaid time; or otherwiſe " to be tranſported for a term not exceeding ſeven years, " as the Court ſhall think moſt proper."

But for the better underſtanding of the other parts of this ſtatute, I ſhall conſider the following particulars:

1. How far the very words of the ſtatute muſt be purſued in a proſecution grounded thereon.

2. In what kind of oaths one may incur the danger thereof.

3. How far the falſe oath muſt appear to have been prejudicial to ſome perſon.

As to the firſt of theſe particulars, *viz.* How far the very words of the ſtatute muſt be purſued.

2. Leon. 211. 214. Shower 190.

Sect. 17. It hath been holden, that in every proſecution on this ſtatute, the words thereof muſt be exactly purſued, and therefore that an indictment or action on the ſaid ſtatute,

tute, alledging that the defendant depoſed ſuch a matter *falsò et deceptivè*, or *falsò et corruptè*, or *falsò et voluntariè*, without expreſsly ſaying that he did it *voluntariè et corruptè*, is not good; and that ſuch a defect cannot be ſupplied by adding the words *contra formam ſtatuti*, or concluding *et ſic voluntarium et corruptum commiſit perjurium*. Alſo it hath been holden, that it is neceſſary expreſsly to alledge that the defendant was ſworn, and therefore that it is not ſufficient to ſay, that *tactо per ſe ſacro evangelio falsò depoſuit*. C. El. 105. 147. Savil 43. 3. Leon. 230. Hetley 12. Holt 534. Skinner 403. See Cox's caſe, Caſes Cro. Law, 65.

Sect. 18. However, it hath been reſolved, that it is not neceſſary to ſhew whether the party, who is accuſed of perjury, did take the falſe oath through the ſubornation of another, or without any ſuch ſubornation, notwithſtanding the words of the ſtatute are, "If any perſon either by "the ſubornation, unlawful procurement, ſiniſter perſuaſion, or means of any other, or by their own act, "conſent, or agreement, commit wilful perjury, &c." for inaſmuch as there is no medium between the two branches of this diſtinction, ſo that all perjury whatſoever muſt needs come within one of them, and it is no way material under which of them it doth come, it is a reaſonable expoſition to look on the ſaid words as put into the ſtatute *ex abundanti*, ſeeing they expreſs no more than the law muſt needs have implied without them; from whence it follows, that they operate no more than if they had not been expreſſed, and conſequently ſhall not oblige the proſecutor neceſſarily to purſue them, which would put him under the difficulty not only of proving the perjury, which alone is material, but alſo of ſhewing it to be within one of the branches of the ſaid diſtinction, which is nothing to the purpoſe. 3. Bulſt. 147. Vid. Sup. C. 10. S. 8.

As to the ſecond of the abovementioned particulars, *viz.* In what kind of oaths one may incur the danger of this ſtatute.

Sect. 19. It hath been reſolved, that no one can be guilty of perjury within the meaning thereof, in any caſe wherein a man may not poſſibly be guilty alſo of ſubornation of perjury within the ſame ſtatute; for it is very reaſonable to give the whole ſtatute the ſame conſtruction; nor can it well be intended, that the makers thereof, who expreſly inflict a greater penalty on ſubornation of perjury than on the perjury itſelf, ſhould mean to extend the purview of the law in relation to what they eſteemed the leſſer crime, farther than in relation to that which they eſteemed the greater; from whence it hath been argued and determined, that becauſe that part of the ſtatute which concerns ſubornation of perjury extends only to ſub-

subornation of perjury in "matters depending in suit by "writ, action, bill, plaint, or information, in any wise con- "cerning lands, tenements, or hereditaments, or goods, "chattels, debts, or damages, &c." therefore the following clause concerning perjury itself, though it be penned in more general words, shall come under the same restriction. And from hence it clearly follows, that no perjury upon an *indictment* or *criminal information*, can bring a man within the danger of the statute, because they are omitted in the abovementioned clause. Also upon this ground it seems easy to account for the judgment in *Price's case*; who being indicted for a perjury supposed to be committed by him in an information for the king, which as I suppose must be intended to have been a criminal one, was discharged upon an exception taken to the indictment; but if the information whereon the said perjury was supposed to have been committed, had been of a civil nature, I do not see any reason why it should not be as well within the meaning as it seems to be expressly within the words of the statute; for surely the opinion that the king cannot by indictment, which is his own proper suit, punish his own witness, who swears for him, cannot be agreeable to law; because however the perjury of such a witness may seem to tend to promote the king's interest in relation to the cause which happens to be in dispute, yet certainly it is as heinous a crime in its own nature, and as much an abuse to justice, and of the same ill consequence to the publick, and consequently as worthy of the king's resentment, as if it had been taken against him.

5. Co. 99.

C. Jac. 120.

3. Inst. 164.

But he is punishable for the same by indictment at common law. Bur. Mansf. 1189.

Sect. 20. Also it hath been resolved, that this statute extends to no other perjury except that of a witness, not only because the clause concerning subornation, to which the subsequent clause concerning perjury has a reference, relates to perjury by witnesses only, but also because the clause concerning perjury mentions only perjury committed by persons in their examinations *ad perpetuam rei memoriam*, or else in their depositions in some of the courts abovementioned, which in common speech are taken for such oaths only as are taken by a witness; and from hence it follows, that no one can come within the statute by reason of any false oath in an (*a*) answer to a bill in Chancery, or in (*b*) swearing the peace against another, or in a (*c*) presentative made by him as homager of a court-baron, or by reason of a false (*d*) wager of law, or for taking a false oath before (*e*) commissioners appointed by the king to make an enquiry concerning his title to certain lands.

(*a*) C Eliz. 148. 2. Leon. 201. Dalison 84. Yelv. 120.

(*b*) 2. R. Abr. 77.

(*c*) 2. Leon. 201.

(*d*) 1. Noy 7. 108. Finch 460.

(*e*) Moor 627.

Sect.

Sect. 21. Alſo it hath been ſaid, that he who makes a falſe affidavit againſt a man in a court of juſtice is not within this ſtatute (†). But perhaps the books wherein this opinion is holden, ought to be intended only of ſuch affidavits which no way relate to a cauſe depending in ſuit before ſuch court; for if they be of ſuch a nature, that either of the parties in variance be grieved, hindered, or moleſted in reſpect of their cauſe in ſuch court by reaſon of the perjury; as where a trial is put off, or a judgment, or execution ſet aſide upon a falſe affidavit; the offence ſeems to be not only within the meaning of the ſtatute, but alſo within the very letter of it, unleſs the words "witneſſes" and "depoſitions" are confined to ſo ſtrict a ſignification, as to bear no kind of application to any other perſon or oaths, except thoſe which are made uſe of upon the trial of the iſſue in queſtion, for which I cannot find any good authority.

2. R. Abr. 77. 1. Roll. 79. 3. Keble 345.

Vide 2. Leon. 40. 1. R. Ab. 30. 42.

However, partly perhaps from this notion, and partly becauſe the ſtatute ſpeaks expreſsly only of depoſitions in the courts abovementioned, it hath been queſtioned, whether a falſe oath before a ſheriff upon a writ of enquiry of damages, be within the ſtatute or not? But if it be conſidered, that the party to whoſe prejudice ſuch a falſe oath is taken is as much aggrieved by it, as if it had been taken in the very court, and the principal judgment of the cauſe depends upon ſuch an inquiry; and the depoſitions made before the ſheriff, may as properly be ſaid to be depoſitions in the court, by which the ſheriff is commiſſioned to take the inquiry, as depoſitions taken before juſtices of *niſi prius*, upon a trial of an iſſue joined in a ſuperior court, which are undoubtedly within the meaning of the ſtatute; and alſo inaſmuch as thoſe who give evidence before a ſheriff upon ſuch an inquiry, may, in the common uſe of words, be as properly called witneſſes, as thoſe who give evidence before the court in which an iſſue is joined, it ſeemeth to be the more plauſible opinion, that ſuch a perjury is within the ſtatute: but ſince it is diſputable whether it be ſo or no, and it is certain that it is perjury at common law, and that in all caſes whatſoever where a man takes a falſe oath, which is not perjury within the ſtatute, but is looked on as perjury at common law, he is ſtill puniſhable for it by indictment or information at the common law, it is certainly moſt adviſeable to proſecute ſuch an offender at the common law, and not upon the ſtatute.

Obſ. on the Stat. 71.

See the authorities above cited.

C. Jac. 1.

(†) If a perſon make an affidavit in the Common Pleas, and afterwards confeſs it to be falſe; the court may record his confeſſion, and ſentence him to the pillory; becauſe any court may puniſh ſuch an offence committed *in facie curiæ*, under this act of 5. Eliz. c. 9. Rex. *v.* Thorowgood, 8. Mod. 179.

As to the third particular, *viz.* How far the falſe oath muſt appear to have been prejudicial to ſome perſon.

Sect. 22. It hath been collected from the abovementioned clauſe, which giveth an action to the party grieved by the offences mentioned in the ſtatute, that no falſe oath is within the meaning thereof, which does not give ſome perſon a juſt cauſe of complaint. And upon this ground it hath been ſaid, that he who ſwears a thing which is true, but not known by him to be ſo, is not within the ſtatute; becauſe howſoever heinous his offence may be in its own nature, yet, when it proves in the event to be in maintenance of the truth, it cannot be ſaid to give him a juſt cauſe of complaint, who would take advantage againſt another from his want of legal evidence to make out the juſtice of his cauſe.

3. Inſt. 166. Vid. ſup. f. 6. Hedley 97. *contra.*

Sect. 23. Alſo from the ſame ground it ſeemeth clearly to follow, that no falſe oath can be within the ſtatute, unleſs the party againſt whom it was ſworn ſuffered ſome kind of diſadvantage by it, for otherwiſe it cannot be ſaid that any one was grieved, hindered, or moleſted by it; and therefore it is certain, that in every proſecution upon the ſtatute, it is neceſſary to ſet forth the record of the cauſe wherein the perjury complained of is ſuppoſed to have been committed; and alſo to prove at the trial of the cauſe, that there is actually ſuch a record, by producing the record itſelf, or a true copy thereof, which muſt agree with that which is ſet forth in the pleadings, without any material variance; for otherwiſe it cannot legally appear that there ever was ſuch a ſuit depending, wherein the party might be prejudiced in the manner ſuppoſed. Alſo it ſeems to be agreed, that it is neceſſary not only to ſet forth the point wherein the falſe oath was aſſigned, but alſo to ſhew in what manner it conduced to the proof or diſproof of the matter in debate between the parties. And it hath been adjudged, that an indictment ſetting forth a ſuit concerning the manor of *Dale*, and aſſigning a falſe oath concerning the manor "*manerium prædictum innuendo*," is not good, becauſe it no otherwiſe appears, that the falſe oath did concern the manor of *Dale*, but by the *innuendo*, which is not a ſufficient averment. Alſo upon the ſame ground it ſeems to be ſafeſt in a proſecution upon the ſtatute for a falſe oath in Chancery, to ſet forth the bill and anſwer, that the plaintiff may appear to have been aggrieved by it. And for the ſame reaſon it ſeemeth alſo, that you ought in ſuch a proſecution of a witneſs in Chancery to ſet forth the interrogatory in particular, and to ſhew how it was material. Alſo it hath been reſolved, that as in an action on the ſta-

Vide ſup. f. 8. & 3. Inſt. 167.

Co. Ent. 164. 6. Mod. 168. 2. Roll. 76. 1. Keb. 452. 935. 941. Raym. 202. 2. Leon. 12. 2. Roll. 427. C. Car. 351, 352, 353. 1. Keb. 452. C. Eliz. 428.

1. Keb. 935. 941.

Sid. 106.

2. Leon. 12. 3. Leon. 68.

tute

tute brought by one perſon, it muſt appear that the falſe oath was prejudicial to the plaintiff, ſo in an action by more than one, it muſt appear to have been prejudicial to every one of the plaintiffs. And it hath been ſaid, that it is not ſufficient to ſhew that the falſe oath cauſed the court to make an award againſt the plaintiff, unleſs it alſo appear that ſuch an award was prejudicial to him; and therefore where the plaintiff at a trial in ejectment challenged a juror, and proved his challenge by a falſe oath, by reaſon whereof the inqueſt was not taken, and conſequently the poſſeſſion of the defendant, who had a defeaſible title, continued longer than it otherwiſe would have done, it was adjudged, that ſuch a defendant cannot have an action on the ſtatute againſt ſuch witneſs, becauſe in truth he gained an advantage by the perjury. Alſo it hath been holden, that it is not ſufficient to ſhew that the perjury, for which an action is brought upon the ſtatute, was actually prejudicial to the plaintiff, unleſs it be alſo ſhewn to have been made in ſome cauſe which may properly be ſaid to have been depending in ſuit between him and the perſon for whom the witneſs was examined; and therefore it hath been holden, that where *A.* brought a bill in Chancery againſt *B.* and the lord keeper, by an order, made *C.* to be as a party to the bill againſt *B.* and afterwards a commiſſion went forth to examine witneſſes between *B.* and *C.* upon which *D.* being produced as a witneſs on the part of *C.* ſwore directly for him againſt *B.* whereupon a decree was made againſt *B.* yet *B.* cannot have an action on the ſtatute, becauſe *C.* was not a party to the ſuit, but came in *à latere*, by an order; and it is ſaid, that the words of the ſtatute are, "where one "is grieved by a depoſition in a ſuit between party and "party;" but perhaps the authority of this opinion may juſtly be queſtioned, not only becauſe the words of the ſtatute whereon it is grounded are miſtaken, but alſo becauſe the offence ſeems in truth to be both within the meaning and letter of the law, ſince thereby a perſon is grieved in reſpect of a cauſe depending in ſuit in a court mentioned in the ſtatute: however there ſeems to be no doubt but that a perjury which only tends to increaſe or leſſen the damages to be given to a plaintiff, is as much within the ſtatute, as any perjury which goes directly to the point of the iſſue. Alſo it ſeemeth to be ſettled, that perjury in a cauſe wherein an erroneous judgment is given, is a good foundation of a proſecution upon the ſtatute, while ſuch judgment ſtands unreverſed.

2. Leon. 40

Yelv.

2. Leon. 198.
1. Keb. 9.
Raymond 74.
1. Sid. 148.
2. Keb. 718.
854.
1. Keb. 531.

† *Sect.* 24. It is enacted by 8. Geo. 1. c. 6. "That if "any perſon making ſuch affirmation or declaration as is

Quakers.

" appointed by this act, ſhall be lawfully convicted of wil-
" ful, falſe, and corrupt affirming or declaring any matter
" or thing, which if ſworn in the common or uſual form,
" would have amounted to wilful and corrupt perjury;
" every perſon ſo offending ſhall incur and ſuffer ſuch and
" the ſame pains, penalties, and forfeitures as are inflicted
" or enacted by the laws againſt perſons convicted of wilful
" and corrupt perjury."

Probate of wills. O. B. 1784. p. 909.

† *Sect.* 25. It is alſo enacted by 31. Geo. 2. c. 10. ſ. 24. " That whoſoever ſhall willingly and knowingly take a
" falſe oath, or procure any perſon to take a falſe oath, to
" obtain the probate of any will or wills, or to obtain let-
" ters of adminiſtration in order to receive the payment of
" any wages, pay, or other allowances of money, or prize-
" money, due, or that were ſuppoſed to be due, to any of-
" ficer, ſeaman, or other perſon intitled, or ſuppoſed to be
" intitled, to any wages, pay, or other allowances of mo-
" ney or prize-money, for ſervice due on board of any ſhip
" or veſſel of his majeſty, &c. or the executor, admini-
" ſtrator, wife, relation, or creditor, of any ſuch officer or
" ſeaman, or other perſon who has really ſerved, or was
" ſuppoſed to have ſerved on board of any ſhip or veſſel of
" his majeſty, &c. ſhall be deemed guilty of felony, and
" ſuffer death without benefit of clergy." (6)

(6) By 28. Geo. 2. c. 13. ſ. 14. for the relief of inſolvent debtors, If any ſheriff or other officer perjure himſelf, in taking the oaths directed by the act, he ſhall forfeit 500l.—And if the offence be committed by a priſoner, or other perſon enabled and intending to take the benefit of the act, it is felony without clergy.—Vide alſo 23. Geo. 3. c. 31. reſpecting perjury of freeholders at elections for Cricklade.

Form of the indictment.

† *Sect.* 26. It is recited by 23. Geo. 2. c. 11. " Whereas by reaſon of difficulties attending proſecutions for perjury and ſubornation of perjury, thoſe heinous crimes have frequently gone unpuniſhed:" For remedy whereof it is enacted, " That in every information or indictment for wilful
" and corrupt perjury, it ſhall be ſufficient to ſet forth the
" ſubſtance of the offence charged upon the defendant, and
" by what court, or before whom the oath was taken, (aver-
" ring ſuch court, or perſon or perſons to have a compe-
" tent authority to adminiſter the ſame) together with the
" proper averment or averments to falſify the matter or
" matters wherein the perjury or perjuries is or are aſſigned;
" without ſetting forth the bill, anſwer, (7) information,
" indictment, declaration, or any part of any record or

(7) In perjury in an anſwer in Chancery, it is not neceſſary to prove the identity of the perſon who ſwore the oath; it is ſufficient if the hand-writing be proved, and that the jurat was ſubſcribed by the maſter as being ſworn before him. Rex *v.* Morris, 2. Burr. 1189. See alſo Rex *v.* James, 1. Show. 397. and Rex *v.* Brady, Caſes Cro. Law. 49. *notis*.

" pro-

" proceeding, either in law or equity, other than as afore-
" ſaid; and without ſetting forth the commiſſion or au-
" thority of the court, or perſon or perſons before whom
" the perjury was committed."

† *Sect.* 27. It is alſo further enacted by par. 2. " That
" in every information or indictment for ſubornation of
" perjury, or for corrupt bargaining or contracting with
" others to commit wilful and corrupt perjury, it ſhall be
" ſufficient to ſet forth the ſubſtance of the offence charged
" upon the defendant without ſetting forth the bill, anſwer,
" information, indictment, declaration, or any part of any
" record or proceeding either in law or equity, and with-
" out ſetting forth the commiſſion or authority of the
" court, or perſon or perſons before whom the perjury
" was committed, or was agreed or promiſed to be com-
" mitted." (8)

(8) In general the Court will oblige the defendant to plead or to demur to even a defective indictment for this offence. 2. Hawk. c. 25. ſ. 146. They are alſo very cautious in granting a *certiorari* to remove it. 2. Hawk. c. 27. ſ. 28. And Lord Thurlow refuſed permiſſion to amend an anſwer, where an indictment for perjury had only been threatened, even where the party, having no intereſt, could not be ſuppoſed to make the falſe oath intentionally. Brown's Caſes in Chancery, 419. For it is the province of the grand jury to judge of the intention. Vaux *v.* Lord Waltham. And what the grand jury may find the Court will never expunge. B. R. H. 203.

The Court may order perjured witneſſes to be proſecuted.

† *Sect.* 28. And the better to prevent great offenders from eſcaping puniſhment by reaſon of the expence attending ſuch proſecutions, it is farther enacted by p. 3. " That
" it ſhall and may be lawful to and for any of his majeſty's
" juſtices of aſſize, or *niſi prius*, or general gaol delivery,
" or of any of the great ſeſſions of Wales, or of the coun-
" ties palatine; and they are hereby authoriſed (ſitting the
" court, or within twenty-four hours after) to direct any
" perſon examined as a witneſs upon any trial before him
" or them, to be proſecuted for the ſaid offence of perjury,
" in caſe there ſhall appear to him or them a reaſonable
" cauſe for ſuch proſecution, and that it ſhall appear to
" him or them proper ſo to do; and to aſſign the party
" injured, or other perſon undertaking ſuch proſecution,
" counſel, who ſhall, and are hereby required to do their
" duty without any fee, gratuity, or reward for the ſame."
Such proſecution is alſo exempted from tax or duty and fees of court, and the clerk of the aſſize is ordered to give the proſecutor a certificate of the ſame, being directed, with the counſel's names, &c.

Attornies.

† *Sect.* 29. And it is further enacted by 12. Geo. 1. c. 29. ſ. 4. "That if any perſon who hath been, or ſhall be convicted of wilful and corrupt perjury, or ſubornation of perjury, (9) ſhall act or practiſe as an attorney or ſolicitor, or agent in any ſuit or action, in any court of law, or equity, in England, the judge or judges of the court where ſuch ſuit or action is or ſhall be brought, ſhall, upon complaint or information thereof, examine the matter in a ſummary way (10) in open court, and if it ſhall appear to the ſatisfaction of ſuch judge or judges, that the party hath offended contrary to this act, ſuch judge or judges ſhall cauſe ſuch offender to be tranſported for ſeven years."

(9) Or of forgery or common barratry.

(10) Vide 2. Bar. K. B. 34.

CHAP-

CHAPTER THE SEVENTIETH.

OF FORGERY.

OF Forgery there are two kinds: Firſt, By common law. Secondly, By the ſtatute. Britt. 16, Fleta 2. c. 22.

Sect. 1. FORGERY by the common law ſeemeth to be an offence in falſely and fraudulently making or altering any matter of record; or any other authentick matter of a publick nature; as a pariſh regiſter, or any deed or will; puniſhable by fine and impriſonment, and ſuch other corporal puniſhment as the Court in diſcretion ſhall think proper.

For the better underſtanding whereof I ſhall endeavour to ſhew,

1. In what caſes the making or altering of a writing ſhall be ſaid to be ſo far falſe and fraudulent, as to amount to forgery.

2. That a man may be guilty of forgery in reſpect of all the abovementioned writings, and no other.

Sect. 2. As to the firſt particular, it is ſaid to be poſſible for a man knowingly to make a deed in his own name, and alſo to ſign and ſeal it himſelf, which yet in judgment of law, may be no better than a downright forgery; as if a man make a feoffment of certain lands to *J. S.* and afterwards make a deed of feoffment of the ſame lands to *J. D.* of a date prior to that of the feoffment to *J. S.* in which caſe he is ſaid to be guilty of forgery, becauſe he knowingly falſifies the date, in order to defraud his own feoffee, by making a ſecond conveyance which at the time he had no power to make. Alſo it is ſaid, that his crime would have been no leſs, if by his conveyance he had paſſed only an equitable intereſt for good conſideration, and had afterwards by ſuch a ſubſequent antedated conveyance endeavoured to avoid it. Alſo in many other caſes a writing may be ſaid to be forged where neither the hand nor ſeal of any one are forged; as where one being directed to draw up a will for a ſick perſon, doth inſert ſome legacies therein of his own head; or where one finding another's name at the bottom of a letter at a conſiderable diſtance from the other writing,

3. Inſt. 169. Fulton 46. 27. H. 6. 3. Moor 655. 759. Noy 101. 3. Inſt. 170. Con. Dyer 288. 3. Inſt. 171.

writing, causes the letter to be cut off, and a general release to be written above the name, and then takes off the seal, and fixes it under the release; or where one inserts into an indictment the names of those against whom in truth it was not found; or where one makes any fraudulent alteration of the form of a true deed in a material part of it; as by making a lease of the manor of *Dale* appear to be a lease of the manor of *Sale*, by changing the letter *D.* into an *S.* or by making a bond for five hundred pounds, expressed in figures, seem to have been made for five thousand, by adding a new cypher. But *Sir Edward Coke* seems to say, that a deed so altered may more properly be called *a false* than *a forged* writing, because it is not forged in the name of another, nor his seal nor hand counterfeited. But I see no good reason why such an alteration of a deed should not as properly be called forgery, as the entire making of a new deed in another's name; for in both cases not only the fraud and villainy are the very same, but also a man's hand and seal are falsely made use of to testify his assent to an instrument, which after such an alteration is no more his deed than a stranger's. Also the notion of forgery doth not seem so much to consist in the counterfeiting a man's hand and seal, which may often be done innocently, but in the endeavouring to give an appearance of truth to a mere deceit and falsity, and either to impose that upon the world as the solemn act of another, which he is no way privy to, or at least to make a man's own act appear to have been done at a time when it was not done, and by force of such a falsity to give it an operation, which in truth and justice it ought not to have, as appears by the foregoing cases in this section, to most of which *Sir Edward Coke* himself seems to agree.

3. Modern 66.
8 Modern 192.
Fitzgib. 261.
12. Mod. 493, 496.
Strange 69.
3. Inst. 169.
Moor 619.
3. Inst. 169.
Vide Moor 619.
3. Modern 66.
Vide 2. R. Ab. 28, 29.
11. Coke 27.
Foster 116.

Sect. 3. But it seemeth to be clear, that he who writes a deed in another's name, and seals it in his presence, and by his command, is not guilty of forgery, because the law looks on this as the other's own sealing.

Fulton 46.
21. H. 6. 4.

Sect. 4. Also it hath been adjudged, that he shall not be punished for forgery who raseth out the word *libris* out of a bond made to himself, and putteth in *marcis*, because here is no appearance of a fraudulent design to cheat another, and the alteration is prejudicial to none but to him who makes it, whose security for his money is wholly avoided by it; yet it is said, that it would be forgery, if by the circumstances of the case it should any way appear to have been done with an eye of gaining an advantage to the party himself, or of prejudicing a third person. Also it is holden, that

Noy 99.
Moor 655.
Salk. 375.

that ſuch an alteration, even without theſe circumſtances, is a miſdemeanor, though it be no forgery.

Sect. 5. It hath been reſolved, that a man ſhall not be adjudged guilty of forgery for writing a will for another without any directions from him, who becomes *non compos* before it is brought to him; for it is not the bare writing an inſtrument in another's name without his privity, but the giving it a falſe appearance of having been executed by him, which makes a man guilty of forgery. Moor 760.

Sect. 6. It is ſaid, that regularly a man cannot commit an act of forgery by a bare nonfeaſance, as by omitting a legacy out of a will, which he is directed to draw for another. Yet it hath been holden by ſome, even in this very caſe, that if the omiſſion of a bequeſt to one cauſe a material alteration in the limitation of a bequeſt to another, as where the omiſſion of a deviſe of an eſtate for life to one man cauſeth a deviſe of the ſame lands to another to paſs a preſent eſtate, which otherwiſe would have paſſed a remainder only, he who makes ſuch an omiſſion is guilty of forgery. In this caſe the firſt enquiry ſhould be, with what intention the omiſſion was made. Moor 760. Noy 101.

Sect. 7. It ſeemeth to be no way material, whether a forged inſtrument be made in ſuch a manner, that if it were in truth ſuch as it is counterfeited for, it would be of validity, or not; and upon this ground it hath been adjudged, that the forgery of a protection in the name of *A. B.* as being a member of parliament, who in truth at the time was not a member, is as much a crime as if he were. 1. Sid. 142.

AND NOW I am to ſhew, in the ſecond place, that a man may be guilty of forgery at common law in reſpect of any of the abovementioned writings, and of no other.

Sect. 8. And FIRST it is clear, that one may be guilty thereof by the common law, by counterfeiting a matter of record; for ſince the law gives the higheſt credit to all records, it cannot but be of the utmoſt ill conſequence to the publick, to have them either forged or falſified. 1. R. Ab. 65, 76. Yelv. 146. C. Eliz. 178. 3. Mod. 66. 8. Mod. 192. 12. Mod. 493. 496. Strange 69.

Sect. 9. SECONDLY, Alſo there ſeemeth to be no doubt but that one may be guilty of this crime by the common law, by forging any other authentick matter of a publick nature, as a (*a*) privy ſeal, or a (*b*) licence from the barons of the Exchequer to compound a debt, or a (*c*) certificate (*a*) 1. R. Abr. 68. C. Car. 326. 1. Jones 325. (*b*) 1. R. Ab. 65. 2. Bulſ. 137. (*c*) 1. Lev. 138;

tificate of holy orders, or a (*a*) protection from a parliament man.

(*a*) 1. Sid. 142.

Sect. 10. THIRDLY, It is alſo unqueſtionable, that a man may be in like manner guilty of forgery at common law, by forging a (*b*) deed; and ſurely there cannot be any reaſon to doubt, but that one may be equally guilty by forging a (*c*) will, which cannot be thought to be of leſs conſequence than a deed. But I do not find this point any where directly holden.

(*b*) 1. R. Ab. 66. Raymond 81. Owen 47. 1. Sid. 278. 3. Leon. 170.

(*c*) Moor 760. Noy 101. Dyer 302. It is now made felony by 2. Geo. 2. c. 25. Ante p. 210.

Sect. 11. As to other writings of an inferior nature, it ſeems to have been generally laid down as a (*d*) rule, that the counterfeiting of them is not properly forgery; (*e*) and ſome have gone ſo far as to hold, that the forging another's hand, and thereby receiving rent due to him from his tenants, is not puniſhable at all; and therefore it cannot but be more ſafe to proceed againſt offences of this nature, as cheats than as forgeries: but ſurely it cannot be proved by any good authority, that ſuch baſe crimes are wholly diſregarded by the common law, as not deſerving a publick proſecution; for the opinion in the books above cited, that they are puniſhable by no law, ſeems by no means to be maintainable, ſince many of them are moſt certainly puniſhable by force of 33. Hen. 8. c. 1. which is ſet forth at large in the following chapter. Neither can it be a convincing argument, that they are not puniſhable at common law, (*f*) becauſe they are of a private nature, ſince deeds concerning private matters are alſo of a private nature, as much as other writings concerning ſuch matters; yet no one will ſay, that the making a falſe deed concerning a private matter is not puniſhable at common law. But perhaps it may be reaſonable to make this diſtinction between the counterfeiting of ſuch writings, the forgery whereof hath been already ſhewn to be properly puniſhable as forgery, and the counterfeiting of other writings of an inferior nature, that the former is in itſelf criminal, whether any third perſon be actually injured thereby or not, but that the latter is no crime, unleſs ſome one receive a prejudice from it. (1)

(*d*) 1. Roll. 431. 1. Sid. 16. 155. 451. 1. R. Abr. 66. Winch. 40. 90. 3. Leon. 231. 1. Leon. 101. C. Eliz. 296. 853. 3. Bulſ. 265.

(*e*) C. Eliz. 166. 1. Yelv. 146. 1. Bulſt. 265.

(*f*) P. N. B. 96. 99. 100.

(1) Vide Barnard. K. B. 10. Ld. Raym. 1461. 2. Bac. Abr. 568. where theſe opinions were very fully conſidered in the caſe of the King *v.* John Ward, of Hackney; and in which it was determined, that to forge a releaſe or acquittance for the delivery of goods, although not under ſeal, was forgery at common law. Vide alſo Lord Raym. 737. 5. Mod. 137. Raym. 81. and Strange 747.

Sect. 12. Thus far of FORGERY by common law.

And

And now I am to conſider FORGERY *by the ſtatute*, which depends upon 5. Eliz. c. 14. by which it is enacted, "That "if any perſon or perſons upon his or their own head and "imagination, or by falſe conſpiracy and fraud with others, "ſhall wittingly, ſubtilly, and falſely forge or make, or "ſubtilly, cauſe, or wittingly aſſent to be forged or made, "any falſe deed, charter, or writing ſealed, court roll, or "the will of any perſon or perſons in writing, to the in-"tent that the ſtate or freehold of inheritance of any "perſon or perſons of, in, or to any lands, tenements, "or hereditaments, freehold or copyhold, or the right, "title, or intereſt, of any perſon or perſons, of, in, or "to the ſame, or any of them, ſhall, or may be moleſted, "troubled, defeated, recovered or charged; or ſhall pro-"nounce, publiſh, or ſhew forth in evidence any ſuch "falſe and forged deed, charter, writing, court-roll, or "will, as true, knowing the ſame as falſe and forged, as is "aforeſaid, to the intent above remembered (except being "an attorney, lawyer, or counſellor, he ſhall for his client "plead, ſhew forth, or give in evidence ſuch falſe and "forged deed, &c. to the forging whereof he was not party "nor privy), and ſhall be thereof convicted either upon "action or actions of forgery or falſe deeds, to be founded "upon the ſaid ſtatute, at the ſuit of the party grieved, or "otherwiſe according to the order and due courſe of the "laws of this realm, &c. ſhall pay unto the party grieved "his double coſts and damages to be found or aſſeſſed in "that court where ſuch conviction ſhall be, and alſo ſhall "be ſet upon the pillory in ſome open market-town, or "other open place, and there have both his ears cut off, "and alſo his noſtrils ſlit and cut, and ſeared with a hot "iron, &c. and ſhall forfeit to the king the whole iſſues "and profits of his lands and tenements, and ſuffer per-"petual impriſonment, &c."

Of forgery by 5. Eliz. c. 14.

See Pulton 45, 46.

Par. 15.

Rex v. Marriot, 2. Show. 6.

Sect. 13. And, by 5. Eliz. c. 14. ſ. 3. it is further enacted, "That if any perſon or perſons, upon his or their "own head or imagination, or by falſe conſpiration or "fraud had with any other, ſhall wittingly, ſubtilly, and "falſely forge or make, or wittingly, ſubtilly, and falſely "cauſe or aſſent to be made and forged, any falſe charter, "deed, or writing, to the intent that any perſon or perſons "ſhall, or may have, or claim any eſtate or intereſt for a "term of years, of, in, or to any manors, lands, tene-"ments, or hereditaments, not being copyhold, or any "annuity in fee ſimple, fee tail, or for term of life, lives, "or years, or ſhall, as is aforeſaid, forge, make, or cauſe, "or aſſent to be made or forged, any obligation, or bill "obligatory, or any acquittance, releaſe, or other diſ-

"charge

" charge of any debt, account, action, ſuit, demand, or " other thing perſonal; or ſhall pronounce, publiſh, or " give in evidence (except as before excepted), any ſuch " falſe or forged charter, deed, writing, obligation, bill " obligatory, acquittance, releaſe, or diſcharge, as true, " knowing the ſame to be falſe and forged, and ſhall be " thereof convicted by any of the ways and means aforeſaid, " he ſhall pay unto the party grieved his double coſts and " damages, to be found and aſſeſſed in ſuch court, where
Lutw. 190. " the ſaid conviction ſhall be had, and ſhall be alſo ſet " upon the pillory in ſome open market town, or other " open place, and there have one of his ears cut off, and " alſo ſhall ſuffer impriſonment for one year, &c."

A ſecond offence felony without clergy.

Sect. 14. By 5. Eliz. c. 14. ſ. 7. and 8. it is further enacted, " That if any perſon or perſons being convict- " ed or condemned of any of the offences aforeſaid, by " any of the ways and means above limited, ſhall after any " ſuch his or their conviction or condemnation, eſtſoons " commit or perpetrate any of the ſaid offences in form " aforeſaid, that then every ſuch ſecond offence ſhall be " adjudged felony without benefit of clergy, ſaving to all " perſons other than the ſaid offenders, and ſuch as claim " to their uſes, all ſuch rights, &c. which they ſhall have " to any the hereditaments of any ſuch perſon, ſo as is " aforeſaid convicted or attainted, at any time before, &c. " ſaving alſo the dower of ſuch offender's wife, and the " right of his heirs."

Sect. 15. By 5. Eliz. c. 14. ſ. 10. " All juſtices of *oyer* " and *terminer*, and juſtices of aſſize, ſhall have power to " inquire of, hear, and determine the offences aforeſaid."

Sect. 16. But by 5. Eliz. c. 14. ſ. 9. 12. and 16. it is provided, " This act, or any thing therein contained, ſhall not " extend to any ordinary or his commiſſary, &c. for putting " their ſeal of office to any will to be exhibited unto them, " not knowing the ſame to be falſe or forged, or for writing " of the ſaid will or probate of the ſame, nor to any proc- " tor, &c. of any eccleſiaſtical court, for the writing, ſet- " ting forth, or pleading of any proxy made according to " the eccleſiaſtical law, &c. for the appearance of any per- " ſon being cited to appear in ſuch court; nor to any " archdeacon, or official, for putting their authentick ſeal " to the ſaid proxy or proxies, nor to any eccleſiaſtical " judge for admitting the ſame; nor to any perſon who " ſhall plead or ſhew forth any deed or writing exemplified " under the great ſeal of England, or under the ſeal of any " other authentick court of this realm; nor to any perſon " who

" who ſhall cauſe any ſeal of any court to be ſet to any " ſuch deed, charter, or writing enrolled, not knowing the " ſame to be falſe or forged."

In the conſtruction of this ſtatute the following points have been holden: 1. Hale 682.

Sect. 17. FIRST, That a falſe cuſtomary of a copyhold manor, made in parchment under the ſeals of ſeveral tenants of the manor, and containing in it divers falſe cuſtoms, apparently tending to the diſheriſon of the lord, and falſely pretending by its title to be ſet forth by the conſent of all the tenants, and allowance of the lord, is within the firſt branch of forgery mentioned in the ſtatute, as being a ſealed writing made to the intent to moleſt the inheritance of the lord. Dyer 322. 3. Leon. 108.

Sect. 18. SECONDLY, That the forgery of a leaſe for years, or of a grant of a rent-charge for years, in the name of one who is ſeiſed of a freehold or inheritance, is alſo within the ſaid firſt branch of the ſtatute, becauſe the ſaid branch is penned in general words extending to any moleſtation whatſoever of ſuch eſtate, without mentioning any eſtate or intereſt, in the claim whereof ſuch moleſtation ſhall conſiſt; and from this ground it follows, that thoſe words in the ſecond branch of forgery mentioned in the ſtatute, " to the intent that any perſon ſhall claim any " eſtate or intereſt for term of years, &c." are meant only of ſuch forgeries which relate to ſuch an eſtate or intereſt *in eſſe* before. 3. Inſt. 17. Noy 42.

Sect. 19. THIRDLY, That the forgery of a will in writing of one poſſeſſed of ſuch an eſtate, mentioning a bequeſt thereof, is within the ſaid ſecond branch of the ſtatute, as being a falſe writing, made to the intent that ſome perſon may claim an eſtate for years, notwithſtanding the ſaid branch makes no expreſs mention of a will, as the firſt doth. Dyer 302.

Sect. 20. FOURTHLY, That the forgery of a leaſe of lands in *Ireland* is not within either of the branches of the ſtatute. 3. Leon. 170.

Sect. 21. FIFTHLY, That the forgery of a deed containing a gift of mere perſonal chattels, is alſo no way within the ſtatute, the words whereof to this purpoſe are, " If any perſon ſhall forge any obligation or bill obliga- " tory, or any acquittance, releaſe, or other diſcharge of " any debt, account, action, ſuit, demand, or other thing " perſonal." 3. Leon. 170.

Sect.

See C. 42. & 62. 1. Freeman 398. 15. H. 7. 15. 2. R. Abr. 466. Con. 3. Inſt. 171.

Sect. 22. SIXTHLY, That the forgery of a ſtatute-merchant or of a recognizance in the nature of a ſtatute ſtaple, by acknowledging them in the name of another, are within the ſtatute, as being obligations, becauſe they muſt have the ſeal of the party, by the expreſs words of the ſtatutes, which appoint in what manner ſuch ſtatute or recognizance ſhall be taken: but that the forgery of the ſtatute-ſtaple is no way within the ſtatute, becauſe it needeth not the ſeal of the party, but only the ſeal of the ſtaple provided for it.

3. Inſt. 171. 1. Hale 685.

Sect. 23. SEVENTHLY, That he who is truly informed by another that a deed is forged, is in danger of the ſtatute if he afterwards publiſh the ſame to be true, notwithſtanding the words of the ſtatute be, "If any one ſhall publiſh, "&c. ſuch falſe and forged deed, &c. knowing the ſame to "be falſe or forged."

3. Inſt. 172.

Sect. 24. EIGHTHLY, That the double damages to be awarded to the party grieved by a forged releaſe of an obligation, &c. ſhall be governed by the penalty, and not by the true debt appearing in the condition.

Sect. 25. NINTHLY, That one who hath been convicted of publiſhing a forged deed, may become guilty of felony by forging another deed afterwards, as well as by publiſhing any ſuch deed, notwithſtanding the ſecond offence be not of the very ſame nature with the firſt; for the words of the ſtatute are, "if any perſon being convicted or "condemned of any of the offences aforeſaid, &c. ſhall after 3. Inſt. 172. "any ſuch conviction or condemnation, eſtſoons commit "any of the ſaid offences."

11. Modern 3. Holt 326. 3. Keb. 356. 367. 3. Inſt. 169. See 1 Keb. 849. 2. Keb. 129. Other caſes of this kind. 2. Keb. 245. 501. 532. Farreſley 150.

Sect. 26. TENTHLY, That notwithſtanding it be neceſſary in every proſecution upon the ſtatute ſtrictly to purſue the very words of it (for which cauſe it hath been reſolved, that an indictment ſetting forth the forgery of a writing indented, without adding that it was ſealed, is ſufficient), yet there is no neceſſity that the tranſlation of ſuch words be made in proper claſſical Latin, ſo that it be intelligible; and upon this ground it hath been adjudged, that an indictment ſetting forth that the defendant *ſuper caput ſuum proprium* did forge, &c. meaning thereby to expreſs that he did it of his own head, is ſufficient.

1. Ven. 23, 24. Salk. 342. 375. 2. Lev. 111. 221. 3. Keble 353.

Sect. 27. ELEVENTHLY, That upon an indictment of treſpaſs, forgery, and publication of a deed, a verdict finding the defendant guilty *de tranſgreſſione et forgeria prædictis prout ſuperius in indictamento ſupponitur*, is ſufficient, becauſe theſe words

words *de tranſgreſſione prædict'* include the whole. Alſo perhaps ſuch a verdict may be ſufficient for another reaſon, becauſe the offence is equally within the ſtatute, and the puniſhment the very ſame, whether the party be guilty both of the forgery and publication, or of one of them only.

For other determinations upon this ſtatute, vide 2. Bac. Abr. 571. Keb. 707. 748. 803. Barnard. K. B. 168. 441. 461. and the caſe of the King v. Crooke, Strange 901. Beſides this general act, a multitude of others, ſince the Revolution, when paper credit was firſt eſtabliſhed, have, in a variety of inſtances, inflicted capital puniſhment on the crime of forgery; for which vide volume the firſt, chapter fifty-eight.

CHAPTER THE SEVENTY-FIRST.

OF CHEATS.

CHEATS puniſhable by public proſecution, are of two kinds:

1. By the common law.

2. By ſtatute.

Sect. 1. And firſt it ſeemeth, that thoſe which are puniſhable at common law, may, in general, be deſcribed to be deceitful practices, in defrauding or endeavouring to defraud another of his known right by means of ſome artful device, contrary to the plain rules of common honeſty (1); as by playing with falſe dice (*a*); or by (*b*) cauſing an illiterate perſon to execute a deed to his prejudice, by reading it over to him in words different from thoſe in which it was written; or by (*c*) perſuading a woman to execute writings to another, as her truſtee upon an intended marriage, which in truth contained no ſuch thing, but only a warrant of attorney to confeſs a judgment, &c.; or by (*d*) ſuppreſſing a will; or by (*e*) levying a fine in another's name, or (*f*) ſuing out an execution upon a judgment for him, or acknowledging an action in his name, without his privity, and againſt his will; in which caſes, by ſome good (*g*) opinions, the record may be vacated.

(*a*) 2. Roll. 107. C. Jac. 497. 2. R. Abr. 78. 1. Keble 849. Modern 42. Farreſley 40. But ſee the 16. Car. 2. c. 7. and 9. Ann c. 14. infra.
(*b*) 1. Sid. 312.
(*c*) 1. Sid. 431.
(*d*) Noy 103.
(*e*) Noy 99. Moor 630. C. Eliz. 531.
1. Modern 46. 2. Jones 64.
(*f*) Noy 99.
(*g*) See the books above cited, but 2. R. Abr. 863. C. and 12. Co. 223. are contrary.

(1) Changing corn by a miller, and returning bad corn inſtead of it, is puniſhable by indictment; for being in the way of trade it is deemed an offence againſt the publick, 1. Seſſ. Ca. 217. So alſo to run a foot race fraudulently, and by a previous underſtanding with the ſeeming competitor to win money. 6. Mod. 42. So alſo if an indented apprentice enters himſelf as a ſoldier, and receives the bounty, and is diſcharged on his maſter's demanding him, he may be indicted. The King *v.* Jones, Caſes in Cro. Law, 161.

Sect. 2. It (*h*) ſeemeth to be the better opinion, that the deceitful receiving of money from one man to another's uſe, upon *a falſe pretence* of having a meſſage and order to that purpoſe, is not puniſhable by a criminal proſecution, becauſe it is accompanied with no manner of artful contrivance, but wholly depends *on a bare naked lie*; and it is ſaid to be needleſs to provide ſevere laws for ſuch miſchiefs, againſt which common prudence and caution may be a ſufficient ſecurity.

(*h*) 6. Mod. 105. Salkeld 379. 3. Modern 18. L. Ray. 1013. Seſſ. Caſ. 201.

Vide Wheatley's caſe, Bur. 2125. Black. 273.

† Therefore it hath been decided, that an indictment will not lie at common law againſt a perſon for ſelling beer ſhort of the due and juſt meaſure, as ſixteen gallons inſtead of eighteen gallons, for this is only an inconvenience and injury to a private perſon, ariſing from that private perſon's own negligence and careleſsneſs in not meaſuring the liquor upon receiving it, to ſee whether it held out the juſt meaſure or not; but if a tradeſman uſes falſe weights and meaſures in the general courſe of his dealing, or ſell by them to any particular cuſtomer, it is an indictable offence, for this is a deception that common care and prudence is not ſufficient to guard againſt. And upon this diſtinction it has been decided, that a pawn-broker who procures a gold watch chain of gold no way agreeing with the ſtandard, but being according to the rate of twelve carats and two grains in the pound troy weight worſe than the ſtandard, and knowingly, expoſes, and ſells the ſame as and for a thing wholly made of gold, and agreeing with the ſaid ſtandard, is not indictable; for being neither a ſale either by falſe weights or falſe meaſure, it is not a public offence, but a mere private impoſition, againſt which a man's own common prudence ought to be a ſufficient guard.

Rex v. Bower, Cowp. 323.

See the authorities cited in ſect. 1. and the acts recited infra, ſect. 8. and 9.

Sect. 3. Some of the abovementioned offences are puniſhable not only with fine and impriſonment, but alſo with farther infamous puniſhment (as cheating with falſe dice, eſpecially if the offender be a common gameſter); others are puniſhable with fine and impriſonment only, by the diſcretion of the Judges, which is regulated by the circumſtances of each particular caſe; and ſome of them are made felonies by 21. Jac. c. 26. as appeareth from chapter forty-five.

† II. OFFENCES of this kind by ſtatute are thoſe which are effected by means of a *falſe privy token*, or by means of a *falſe pretence*.

† As to the firſt particular, *viz.* cheating another by means of a falſe privy token.

1. Hale 506. 2. Seſſ. Caſ. 27. Strange 866. Bar. K. B. 298. 331. Salkeld 379. 6. Modern 105. 111. 301. 311. 9. St. Tr. 67.

Sect. 4. This depends on the 33. Hen. 8. c. 1. which recites, that many light and evil-diſpoſed perſons, not minding to get their living by *truth*, but compaſſing and deviſing daily how they may unlawfully obtain and get into their hands and poſſeſſion goods, chattels, and jewels of other perſons, for the maintenance of their unthrifty living, and alſo knowing that if they came to any of the ſame goods, chattels, and jewels by *ſtealth*, that then they, being thereof lawfully convicted according to the laws of this realm, ſhall die therefore, have now of late falſely and deceitfully

ceitfully contrived, deviſed, and imagined *privy tokens* and *counterfeit letters* in other men's names, unto divers perſons their ſpecial friends and acquaintances, for the obtaining of money, goods, chattels, and jewels of the ſame perſons, their friends and acquaintances, by colour whereof the ſaid light and evil-diſpoſed perſons have deceitfully and unlawfully obtained and gotten great ſubſtance of money, goods, chattels, and jewels into their hands and poſſeſſion, contrary to right and conſcience: for the reformation whereof IT IS ENACTED, "That if any perſon or perſons ſhall "falſely and deceitfully obtain, or get into his or their "hands or poſſeſſion, any money, goods, chattels, jewels, "or other things of any other perſon or perſons, by co-"lour and means of any *privy falſe token*, or *counterfeit* "*letter* made in another man's name, to a ſpecial friend or "acquaintance, for the obtaining of money, &c. from ſuch "perſon, and ſhall be thereof convicted, by witneſs taken "before the lord chancellor, or before the juſtices of aſſize, "or before the juſtices of peace of any county, city, bo-"rough, town, or franchiſe, in their general ſeſſions, or "by action in any of the king's courts of record, every "ſuch offender ſhall ſuffer ſuch puniſhment by impriſon-"ment, ſetting upon THE PILLORY, or otherwiſe by any "corporal pains, except pains of death, as ſhall be ap-"pointed by thoſe before whom he ſhall be ſo convict."

† *Sect.* 5. And by 33. Hen. 8. c. 1. ſ. 2. it is further enacted, "That as well the *juſtices of aſſize* for the time being, "as alſo two juſtices of peace in every county, whereof the "one to be of the *quorum*, may call and convene by pro-"ceſs, or otherwiſe to the ſaid aſſizes, or general ſeſſions, "any perſon being ſuſpected of any of the offences afore-"ſaid, and commit or bail him till the next aſſizes or ge-"neral ſeſſions, there to be examined and further ordered "by their diſcretions." Dalton 32.

† By 33. Hen. 8. c. 1. ſ. 3. it is alſo further enacted, "That juſtices of the peace in every city, borough, town, "and franchiſe within this realm, ſhall have the like juriſ-"diction, power, and authority at their *general ſeſſions*, and "otherwiſe, to do and execute all and every thing in all "points, as other juſtices of the aſſizes in their circuits, or "juſtices of the peace in the counties by virtue of this act, "ſaving to the *party grieved* by ſuch deceit, ſuch remedy, "by way of action or otherwiſe, of and for the ſame mo-"ney, goods, chattels, jewels, or other thing ſo obtained, "as he might have had if this act had never been made."

3. Inſt. 123. *Sect.* 6. *Sir Edward Coke* is of opinion, that the offender cannot be fined in a proſecution upon this ſtatute, becauſe it is expreſsly ordained, that ſome corporal puniſhment ſhall be inflicted, and no other is mentioned; however, there is a precedent in *Croke's Reports*, by which it C. Car. 564. appears, that one convicted on ſuch a proſecution hath been adjudged not only to ſtand on the pillory, but alſo to pay a fine of five hundred pounds, and to be bound with good ſureties to his good behaviour.

† As to the ſecond particular, *viz.* cheating another by means of a falſe pretence.

† *Sect.* 7. This depends on the ſtatute 30. Geo. 2. c. 24. where IT IS RECITED, that divers ill-diſpoſed perſons, to ſupport their profligate way of life, have, by various ſubtle ſtratagems and devices, fraudulently obtained divers ſums of money, goods, wares and merchandizes, to the great injury of induſtrious families, and to the manifold prejudice of trade and credit, AND ENACTED, "That all perſons Vide annotations to Adding. P. S. p. 272. "who knowingly and deſignedly, by *falſe pretence* or pre- "tences, ſhall obtain from any perſon or perſons, money, "goods, wares, or merchandizes, with intent to cheat and "defraud any perſon or perſons of the ſame, ſhall on con- "viction be put in the pillory, or publickly whipped, or "fined and impriſoned, or tranſported not exceeding the "ſpace of ſeven years, as the Court ſhall in diſcretion "think fit."

† *Sect.* 8. It hath been determined, that theſe two ſtatutes Rex v. Maſon, of 33. Hen. 8. c. 1. and 30. Geo. 2. c. 24. are made *in pari* 2. Term Rep. *materiâ*; that the latter only enlarges the deſcription of the 586. offence given in the former; and that whatever has been determined in the conſtruction of one of them, is a found rule of conſtruction as to the other. And the following determinations have been made:

1. Burr. 355. † *Sect.* 9. FIRST, That to bring an offender within the ſtatute 33. Hen. 8. c. 1. there muſt be a *falſe token* uſed; and therefore where one man went to the houſe of another, Rex v. Munoz, and pretended that ſuch a perſon had ſent him to receive 2. Stra. 1127. twenty pounds, and received it, whereas ſuch perſon did not ſend him, it was held no offence within the ſtatute.

† *Sect.* 10. SECONDLY, That the ſtatute 30. Geo. 2. c. 24. extends to every caſe where a party has obtained money by falſely repreſenting himſelf to be in a ſituation in which he was not, or any occurrence that had not happened to which perſons of ordinary caution might give credit;

dit; and therefore, where *A.* falsely pretended to *B.* that one *C.* had made a bet of five hundred guineas on each side with a colonel in the army then at *Bath*, that *D.* would next day run a foot race, and under colour of letting *B.* go shares in a bet made on the said race, obtained, by such false pretence, twenty guineas from *B.* it was held within the statute; for this statute hath introduced another offence describing it in terms extremely general.

† *Sect.* 11. THIRDLY, That the false token must be used; and therefore, if a person endeavour, by a *counterfeit letter*, to defraud another of goods, and is apprehended on suspicion of such fraud before he has got the goods into his possession, he is not within the statute. Rex v. Brian, 2. Seff Cases, 27.

† *Sect.* 12. FOURTHLY, That it is not sufficient to aver in an indictment on 33. Hen. 8. c. 1. that the offence was effected by a *false token*, or on 30. Geo. 2. c. 24. by a *false pretence*, but that it must shew what the false token in the first case, and the false pretence in the second, was. Rex v. Munoz, 1. Seff. Cases, 201. Rex v. Mason, 2. Term Rep. 581.

† *Sect.* 13. FIFTHLY, That where the pretence is conveyed by words spoken by one defendant in the presence of others who are acting in concert together, they may be all indicted jointly. Rex v. Young, 3. Term Rep. 98.

† *Sect.* 14. SIXTHLY, That it is no objection in arrest of judgment, that the indictment contains several charges of the same nature in the different courts. Rex v. Young, 3. Term Rep. 98.

† *Sect.* 15. SEVENTHLY, That a *certiorari* will not lie on the statute 30. Geo. 2. c. 24. to remove an indictment from the sessions. Rex v. Smith, Cowp. 24.

† *Sect.* 16. By 16. Car. 2. c. 7. "If any person shall by "any fraud, unlawful device or other ill practice in playing "at cards, dice, tables, tennis, bowls, skittles, shovel-"board; or by cock-fighting, horse-racing, dog-matches, "foot-races, or other pastimes, or games, or by bearing a "share in the stakes, or by betting on the side of such as "shall play, act, ride, or run as aforesaid, win any sum or "other valuable thing, he shall forfeit treble the value in "the manner the act directs." 2. Abr. Eq. Cas. 184. Siderfin 344. 1. Levinz 244. Ld. Raym. 69. 2. Levinz 44. 4. Com. Dig. 70.

† *Sect.* 17. By 9. Ann. c. 14. "If any person shall by any "fraud or shift, cozenage, circumvention, deceit, or un-"lawful device, or ill practice whatsoever, in playing at Vide Strange 1048. The King v. Lookup, where it was determined that the Court cannot set a fine upon the offender on a conviction upon this act; that the only judgment they can give is, *that he is convicted*, &c.

" cards, dice, tables, tennis, bowls, or any the games afore-
" ſaid, or bearing a ſhare in the ſtakes, or betting on the
" ſides of ſuch as do play, win any ſum of money, or other
" valuable thing, on conviction by information or indict-
" ment, he ſhall forfeit to ſuch as ſhall ſue for the ſame,
" five times the value, be deemed infamous, and ſuffer
" corporal puniſhment as in caſes of perjury."

CHAP-

CHAPTER THE SEVENTY-SECOND.

OF CONSPIRACY.

FOR the better underſtanding the nature of Conſpiracy, I ſhall conſider,

1. Who may be ſaid to be guilty of Conſpiracy.

2. In what manner ſuch offenders are to be puniſhed.

As to THE FIRST POINT, *viz.* Who may be ſaid to be guilty of CONSPIRACY.

Sect. 1. There can be no better rule than the ſtatute of 33. or rather 21. Edw. 1. the intent whereof was to make a final definition of CONSPIRATORS, to which purpoſe it declareth, "that conſpirators be they that do conſeder or bind "themſelves by oath, covenant, or other alliance, that "every of them ſhall aid and bear the other falſly and ma- "liciouſly to indict, or cauſe to indict, or falſly to move "and maintain pleas; and alſo ſuch as cauſe children within "age to appeal men of felony, whereby they are impriſoned "and ſore grieved; and ſuch as retain men in the country "with liveries or fees for to maintain their malicious en- "terprizes; and this extendeth as well to the takers as to "the givers; and to ſtewards and bailiffs of great lords, who "by their ſeigniory, office, or power, undertake to bear "or maintain quarrels, pleas, or debates that concern other "parties than ſuch as touch the eſtate of their lords or "themſelves."

2. Inſt. 562. Reg. 134. a. 135. Godb. 444. See 2. Vol. of Reeves' Hiſt. of Engliſh Law, 239.

Sect. 2. From this definition of conſpirators it ſeems clearly to follow, that not only thoſe who actually cauſe an innocent man to be indicted, and alſo to be tried upon the indictment whereupon he is lawfully acquitted, are properly conſpirators, but that thoſe alſo are guilty of this offence, who barely conſpire to indict a man falſly and maliciouſly, whether they do any act in proſecution of ſuch conſpiracy or not; for the words of the ſtatute ſeem expreſly to include all ſuch confederacies under the notion of conſpiracy, whether there be any proſecution thereof or not. And if ſuch a confederacy be within the letter of the ſtatute, there ſeems to be no manner of reaſon to ſay, that they are not alſo within the meaning of it, ſince it is a high contempt of the law, barely to engage in ſuch an aſſociation to abuſe it, to ſerve the purpoſes of oppreſſion and injuſtice. Neither can it be a ſevere conſtruction which will bring a

Ld. Ray. 1169. 8. Mod. 321. Burr. 930. 994. 1. Com. 570.

crime ſo evidently contrary to the firſt principles of common honeſty, within the meaning of a law, the words whereof do plainly ſeem to extend to it.

And therefore I cannot but queſtion the accuracy of that deſcription of conſpiracy which is given in the *Third Inſtitute* (*a*), whereby the lawful acquittal of the party grieved is required to make the offenders guilty of this crime. It is true indeed, that a bare conſpiracy to indict a man will not maintain *a writ of conſpiracy* at the ſuit of the party grieved, becauſe it doth not do him any actual damage. Alſo it muſt be confeſſed, that it is often laid down as a general rule, and taken for granted, that no ſuch conſpiracy is a good foundation for ſuch a writ, unleſs the plaintiff be lawfully acquitted. And it is certain, that there is no formed *writ of conſpiracy* in THE REGISTER for a malicious indictment or appeal, but what ſuppoſes ſuch indictment or appeal to have been actually brought, and the party to have been legally diſcharged. From whence it follows, that no one can have the benefit of any ſuch writ in THE REGISTER, who, upon a falſe accuſation, is put to the trouble and vexation of being apprehended, examined, or committed, &c. without being ever indicted or appealed.

(*a*) 3. Inſt. 174. Ld. Ray. 378. 10. Mod. 219. F. N. B. 114. 1. Dan. Abr. 211. 213. S. P. C. 173, 174, 175. B. Corone 89. B. Appeal 68. 1. R. Abr. 110, 111, 114. 9. Co. 56, 57. Regiſter 134. 1. Jon. 93, 94. Salkeld 21. 6. Mod. 261. Bull. N. P. 14. 10. Mod. 219. B. Corone 6. 33. H. 6. 1.

See S. P. C. 174. Vide 2. Inſt. 407. 562. 1. Ventris 47.

However it is certain, that an acquittal by verdict is not always neceſſary to maintain ſuch a writ; for it appears by THE REGISTER itſelf, that where one brought ſuch a writ in the uſual form, having in it the words *quouſque acquietatus fuiſſet*, &c. againſt one who had been non-ſuited in a malicious appeal of felony brought againſt him, his writ was abated, becauſe ſuch a nonſuit would not make good the words *quouſque acquietatus fuiſſet*, and yet he afterwards brought a new writ, wherein he uſed the words *quietus receſſit*, inſtead of *acquietatus fuiſſet*, and recovered. And why may not a new writ as well be formed in any other caſe which is as much within the miſchief of the ſtatute as this? Or what colour can there be to ſay, that the malicious putting of a man to the unreaſonable charge, ſcandal, and trouble of a criminal proſecution, which is ſo palpably groundleſs as not to have probability enough to induce a grand jury to find an indictment, ſhould not be as good a foundation of complaint, and a grievance as much within the meaning of the ſtatute, as the putting one to the charge and vexation of a groundleſs action, either in a temporal or ſpiritual court, for which it appears by THE (*b*) REGISTER that *a writ of conſpiracy* doth lie, without making uſe either of the words *acquietatus fuiſſet*, or *quietus receſſit*? Neither can it be ſaid, that the opinion I contend for is wholly unſupported

(*b*) Regiſt. 134. F. N. B. 116. Finch 306. 2. Inſt. 562. 1. Keb. 254.

ported by authority, as appears from the *Poulterer's Caſe* in (*a*) *Coke's* Ninth Report.

(*a*) 9. Co. 56.

However ſince it is certain, that an (*b*) *action on the caſe* in the nature of ſuch writ doth lie for a falſe and malicious proſecution, for any crime, whether capital or not capital, though it do not proceed to an actual indictment, or appeal, and that the ſame damages may be recovered in ſuch an action as in *a writ of conſpiracy*, it hath been thought needleſs to inquire, whether ſuch writ may be maintained for ſuch a proſecution or not,

(*b*) 1. Jon. 93, 94.—See 3. Burr. 1971. 3. Bl. Com. 126. 1. Leon. 107. C. Eliz. 70. 134. Palm. 315. C. Jac. 130. 357. 490. Latch 79. C. Car. 15. 2. Roll. 256. 237. 2. Bulſt. 270, 271. 1. Roll. 109. 1. R. Abr. 112. 213. Ray 135. 180. Con. 1. Bulſt. 185. Yelv. 116. Hutt. 49. C. Eliz. 563. 9. Co. 57. 563. 5. Mod. 394. 405. 1. Salk. 13. Danv. 208. Strange 691. 1. Ray. 374. Bull. N. P. 14. Holt 4. 150.

But howſoever the law may ſtand in relation to *writs of conſpiracy*, there ſeems to be no manner of reaſon, that the ſtated form of ſuch writs ſhould any way reſtrain a proceeding by way of *indictment* or *information* againſt perſons which are apparently within both the letter and meaning of the ſtatute (1).

(1) In an action for a malicious proſecution, it is incumbent on the plaintiff to ſhew that the original ſuit, whereſoever inſtituted, is at an end; for otherwiſe he might recover in the action, and afterwards be convicted upon the original ſuit, Douglas 215. 2. Term Rep. 225.; for this purpoſe he muſt produce and prove a copy of the acquittal on record, the ſubſtance of the evidence, the charges of acquittal, and the circumſtances which ſhew the proſecution was malicious and without probable cauſe, Bull. Niſi Prius, 13, 14. But if the proſecution was for a miſdemeanor, a copy of the record is not neceſſary to be granted by the Court to found the action, Morriſon *v.* Kelly, 1. Bl. Rep. 385.

It ſeems certain, that a man may not only be condemned to THE PILLORY, but alſo be branded, for a falſe and malicious accuſation; but ſince it doth not appear to have been ſolemnly reſolved, that ſuch an offender is indictable upon the ſtatute, it ſeems to be more ſafe and adviſeable to ground an indictment of this kind upon the common law than upon the ſtatute, ſince there can be no doubt but that all confederacies whatſoever, wrongfully to prejudice a third perſon, are highly criminal at common law; as where divers perſons confederate (*c*) together by indirect means to impoveriſh a third perſon, or (*d*) falſly and maliciouſly to charge a man with being the reputed father (*e*) of

(*c*) 1. Lev. 62. 126. 1. Sid. 174. 1. Keble 350.

(*d*) 1. Lev. 62. 1. Mod. 185, 186. 1. Sid. 68. 1. Keble 254. (*e*) 27. Aſſ. 44. 9. Co. 56. 3. R. Abr. 77. See Moor 788. Salkeld 174. 1. Ventris 303, 304. 6. Mod. 185. 8. Mod. 320. 11. Mod. 55. Carth. 416. Foſter 221.

a baſtard

a baſtard child, or to maintain one another in any matter, whether it be true or falſe (2).

(2) Journeymen confederating and refuſing to work unleſs for certain wages may be indicted for a conſpiracy, notwithſtanding the ſtatutes which regulate their work and wages do not direct this mode of proſecution; for the offence conſiſts in the conſpiring, and not in the refuſal, and all conſpiracies are illegal, although the ſubject matter of them may be lawful, Rex *v.* Journeymen Taylors of Cambridge, 8. Mod. 11. 320. So alſo a bare conſpiracy to do a lawful act to an unlawful end is a crime, although no act be done in conſequence thereof, 8. Mod. 321. And the fact of conſpiring need not be proved on the trial, but may be collected by the jury from collateral circumſtances, 1. Black. Rep. 392. Strange 144. And if the parties concur in doing the act, although they were not previouſly acquainted with each other, it is conſpiracy, Lord Mansfield in the caſe of the priſoners in the king's bench, Hilary Term, 26. Geo. 3. See alſo Rex *v.* Cope and others, 1. Strange 144.

Sect. 3. Neither doth it ſeem to be any juſtification of a confederacy to carry on a falſe and malicious proſecution, that the indictment or appeal which was preferred, or intended to be preferred, in purſuance of it, was (*a*) inſufficient, or that the court wherein the proſecution was carried on, or deſigned to be carried on, had no juriſdiction of the cauſe, or that the matter of the indictment did import no manner of ſcandal, ſo that the party grieved was in truth in no danger of loſing either his life, liberty, or reputation. For notwithſtanding the injury intended to the party againſt whom ſuch a confederacy is formed, may perhaps be inconſiderable, yet the aſſociation to pervert the law in order to procure it, ſeems to be a crime of a very high nature, and juſtly to deſerve the reſentment of the law (*b*).

(*a*) Palm. 45. 3. Keble 141. Style 157. 1. R. Abr. 110. 9. Coke 26. Yelv. 46. 117. C. Eliz. 563. 2. Bulſ. 270, 271. Cro. Jac. 357. 1. Roll. Rep. 109.

(*b*) Reg. 134. F. N. B. 116. 3. Aſſ. 13. 11. H. 7. 25, 26. 1. R. Abr. 112. 2. Mod. 52. 326. Con. 2. Keb. 881. W. Jones 94. 2. Cr. 130.—Therefore on an indictment for wickedly and unlawfully conſpiring to accuſe another of *taking hair out of a bag*, without alledging it to be an unlawful and felonious taking, Lord Mansfield declared, that the indictment was well laid, for the giſt of the offence is the *unlawful conſpiring* to do an injury by a falſe charge, Riſpal's Caſe, 1. Black. Rep. 368. Burr. 1320. Cro. Cir. Aſſiſtant, 216, 217. And it does not ſeem neceſſary in an indictment for this offence to ſpecify any particular act, nor to ſtate by what means the conſpiracy was effectuated, for the means of the conſpiracy are matters of evidence. Conſpiracy is the giſt of the charge; and to do a thing lawful in itſelf by conſpiracy is unlawful, Rex *v.* Eccles, Lancaſter Summer aſſizes, 1783. Vide alſo 1. Salk. 174. Cro. Cir. Aſſiſtant, 190. *in notis.* and 1. Black. Rep. 392.

Sect. 4. Neither (*c*) is it any plea for one who is proſecuted for ſuch an unlawful confederacy, that nothing more was intended by him, but only to give his teſtimony in a legal courſe of juſtice againſt the party to whoſe prejudice ſuch confederacy is ſuppoſed to have been formed; for notwithſtanding it may be ſaid, that it would be a great diſcouragement to legal proceedings to make perſons liable to a criminal proſecution, for barely intending to give their evidence, and it would be a pre-judging of a cauſe to try the truth of the teſtimony intended to be given in it before the cauſe itſelf is determined, yet the law will rather venture this

(*c*) 9. Co. 55, 56, 57. 12. Co. 23. 90, 91, 92. C. Eliz. 70, 71. 134. 1. Leon. 107. 1. R. Abr. 113, 114, 115. Winch. 28. 54. Latch 79, 80. Con. 1. R. Abr. 10. F. N. B. 115. 27. H. 8. 2.

this miſchief, than ſuffer ſo flagrant a villainy to go unpuniſhed. However if there be any probability that the principal cauſe will ever be tried, it ſeems proper to apply to the Court to ſtay the trial of the confederacy until the merits of the principal cauſe be determined.

Sect. 5. Yet (*a*) it ſeems to be certain, that no one is liable to any proſecution whatſoever, in reſpect of any verdict given by him in a criminal matter, either upon a grand or petit jury; for ſince the ſafety of the innocent, and puniſhment of the guilty, doth ſo much depend upon the fair and upright proceeding of jurors, it is of the utmoſt conſequence, that they ſhould be as little as poſſible under the influence of any paſſion whatſoever. And therefore, leſt they ſhould be biaſſed with the fear of being harraſſed by a vexatious ſuit for acting according to their conſciences (the danger of which might eaſily be inſinuated, where powerful men are warmly engaged in a cauſe, and thoroughly prepoſſeſſed of the juſtice of the ſide which they eſpouſe), the law will not leave any poſſibility for a proſecution of this kind.

(*a*) 27. Aſſ. 77. 27. Aſſ. 12. 9. H. 6. 44. Bridg. 130, 131. 21. E. 3. 17. 47. E. 3. 17. 12. Co. 23, 24. Reg. 134. F. N. B. 115. 27. H. 8. 2. S. P. C. 172, 173. Ld. Ray. 469. 12. Co. 23, 24.

It is true indeed, that jurors were formerly ſometimes queſtioned in THE STAR CHAMBER, for their partiality in finding a manifeſt offender not guilty; but this was always thought a very great grievance: and ſurely as the law is now ſettled by *Buſhel's Caſe*, there is no kind of proceeding againſt jurors in reſpect of their verdicts in criminal matters allowed of at this day. As to the objection, that an attaint lies againſt a jury for a falſe verdict in *a civil cauſe*, and that there is as much reaſon to allow of it in *a criminal one*, it may be anſwered, that in an attaint, a man's property is only brought into queſtion a ſecond time, and not his liberty or life: and alſo it may be generally preſumed, that a jury is likely to be equally influenced with the fear of an attaint from either of the contending parties; whereas if any ſuch examinations of their proceedings were allowed in criminal cauſes, they might be often in great danger of one ſide, by incurring the reſentment of a powerful proſecutor, and provoking him to call their conduct into queſtion for their ſuppoſed partiality; but they could have little to fear from an injured criminal, who would ſeldom be in circumſtances to make his proſecution formidable.

F. N. B. 105, 106. Vaugh. 135.

Sect. 6. And as the law has exempted jurors from the danger of incurring any puniſhment in reſpect of their verdict in criminal caſes, it hath alſo freed the Judges of all courts of record from all proſecutions whatſoever, except in the parliament, for any thing done by them openly in ſuch courts

12. Coke 24. See Vaugh. 138, 139. 12. Ed. 4. 18. 21. Ed. 4. 67. S. P. C. 173.

courts as Judges. For the authority of a government cannot be maintained, unleſs the greateſt credit be given to thoſe who are ſo highly intruſted with the adminiſtration of public juſtice; and it would be impoſſible for them to keep up in the people that veneration of their perſons, and ſubmiſſion to their judgments, without which it is impoſſible to execute the laws with vigour and ſucceſs, if they ſhould be continually expoſed to the proſecutions of thoſe whoſe partiality to their own cauſes would induce them to think themſelves injured. Yet if a Judge will ſo far forget the dignity and honour of his poſt, as to turn ſolicitor in a cauſe which he is to judge, and privately and extrajudicially tamper with witneſſes, or labour jurors, he hath no reaſon to complain if he be dealt with according to the ſame capacity to which he ſo baſely degrades himſelf.

12. Co. 24.

Carth 416. 1. R. Abr. 107. 112, 113. 115. 1. Cor. 69.

Sect. 7. It appears not only from the words of the ſtatute, but alſo from the plain reaſon of the thing, that no confederacy whatſoever to maintain a ſuit can come within the danger of the ſtatute, unleſs it be both falſe and malicious. For it would be a moſt dangerous diſcouragement of all legal proſecutions, if thoſe who engage in them upon a probable ground, ſhould be in danger of being found guilty of ſo heinous a crime upon their not being able to bring their ſuits to their intended effect. And from hence it clearly follows, that if the defendants to an indictment or appeal in murder be found guilty of homicide *ſe defendendo*, or by miſadventure, or get off by pleading the king's pardon, their proſecutors are in no danger of being puniſhed as conſpirators. And from the ſame ground it alſo follows, that if the defendants in a writ of conſpiracy can ſhew a probable cauſe of ſuſpicion, they ſhall be diſcharged; as where being accuſed of a conſpiracy for indicting a perſon of larceny, they can ſhew that a larceny was committed at ſuch a time and place, and that the party charged by them for ſuch larceny was found by them at the ſame time and place, with ſuſpicious circumſtances: or where perſons being charged with a conſpiracy for indicting another for feloniouſly carrying away a woman with great violence, and numbers are able to prove that they ſaw the perſons whom they ſo accuſed riding armed in a warlike manner, and following after thoſe who in truth actually did the felony, and that it was the common report of the country that they were all of the company. But ſome have ſaid, that there is a neceſſity to plead ſuch matter ſpecially, and that it cannot be given in evidence on the general iſſue.

5. P. C. 173. 22. Aſſ. 77. 1. Leon. 107. C. Eliz. 134. Keilw. 81. 83. 20. H. 7. 11. 20. H. 7. 11. Keilw. 81. C. Eliz. 134. 1. Leon. 107.

12. Mod. 208.

Sect. 8. It plainly appears from the words of the ſtatute, that one perſon alone cannot be guilty of conſpiracy within the

the purport of it; from whence it follows, that if all the defendants who are profecuted for ſuch a conſpiracy be acquitted but one, the (a) acquittal of the reſt is the acquittal of that one alſo. Alſo upon the ſame ground it hath been holden, that no ſuch proſecution is maintainable againſt a (b) huſband and wife only, becauſe they are eſteemed but one perſon in law, and are preſumed to have but one will.

(a) 8. H. 4. 6. 28. Aſſ. 12. S. P. C. 173. C. Eliz. 701. 5. Mod. 222. But if two perſons be indicted for a conſpiracy, and one of them pleads to iſſue, and is found guilty, judgment ſhall be given againſt him, Rex v. Kinnerſley, and Moor, 1. Strange 193. even although the other conſpirator named in the indictment was dead before the indictment is preferred, Rex v. Nichols and Bygrave, 2. Strange 1227. 1. R. Abr. 111. (b) 38. Ed. 3. 3. S. P. C. 174.

And it is certain, that an *action on the* (c) *caſe* in the nature of a conſpiracy may be brought againſt one only. Alſo (d) it hath been reſolved, that if ſuch an action be brought againſt ſeveral perſons, and all but one be acquitted, yet judgment may be given againſt that one only.

(c) Carth. 416. 1. R. Abr. 111, 112. F. N. B. 116. C. Jac. 194. C. Car. 239. 3. Mod. 220.

(d) 1. R. Abr. 111, 112. C. Eliz. 701. 6. Mod. 170. 1. Saund. 228. Ray. 176. 180. 2. Keb. 497. Str. 144. 193. 1227. 1. Wilſ. 210. 5. Mod. 408. Latch 80. 262. 12. Mod. 209. Buller N. P. 14.

As to THE SECOND POINT, *viz.* In what manner offenders of this nature are to be puniſhed.

Sect. 9. It is clear, that thoſe who are convicted of conſpiracy at the ſuit of the (e) party ſhall only have judgment of fine and impriſonment, and to render to the plaintiff his damages. Alſo it is certain, that he who is convicted at the ſuit of the (f) king, of a conſpiracy to accuſe another of a matter which may touch his life, ſhall have judgment that he ſhall loſe the freedom and franchiſe of the law (whereby he is diſabled to be put upon any jury, or to be ſworn as a witneſs, or even to appear in perſon in any of the king's courts); and alſo that his houſes, lands, and goods, ſhall be ſeized into the king's hands, and his houſes and lands eſtreped and waſted, his trees rooted up and raſed, and his body impriſoned. And this is commonly called a villainous judgment, and is given by the common law, and not by any ſtatute, as is ſaid generally in ſome (g) books, to be the proper judgment upon every conviction of conſpiracy at the ſuit of the king, without any reſtriction to ſuch as endangered the life of the party. But I do not find this point any where ſettled (3).

(e) 24. Ed. 3. 34. b. 3. Inſt. 143. 2. Inſt. 383. 562. S. P. C. 175.

(f) 24. Ed. 3. 34. 12. Mod. 209. F. N. B. 116. 3. Inſt. 143. 2. Inſt. 562. S. P. C. 173. 27. Aſſize 59. Carth. 416.

(g) See the books above cited. 27 Aſſ. 59. S. P. C. 175. 46. Aſſ. 11. Burr. 1026. Strange 196.

(3) There has been no inſtance of the villainous judgment ſince the reign of Edward the Third. The uſual mode of puniſhment at preſent is by pillory, fine, impriſonment, and ſurety for the good behaviour, Burr. 996. 1027. Str. 196. Crown Cir. 208. The quarter ſeſſions have juriſdiction over this offence, Finch 80. 8. Mod. 321. 3. Burr. 1320. Cro. Cir. Aſſiſtant, 189, 190. *notis*. And on the motion in arreſt of judgment, the defendant muſt be perſonally preſent in court, Strange 1227. Burr. 931.

CHAPTER

CHAPTER THE SEVENTY-THIRD.

OF LIBELS.

IN treating of Libels, I ſhall conſider,

1. What ſhall be ſaid to be a Libel.

2. Who are liable to be puniſhed for it.

† 3. In what manner they are to be tried.

4. In what manner they are to be puniſhed.

See 3. Inſt. 174. 9. Co. 53. 59. Moor 813. 627. March 131. 4. Co. 14. Popham 133. 139. Selden tit. Libels. 1. Ventris 31. Hob. 253. Carth. 405. 1. Salk. 211. Fitzgib. 121. 253. 2. Wilſon 403. 2. Burr. 980.

As to THE FIRST POINT, *viz.* What ſhall be ſaid to be a Libel.

Sect. 1. It ſeemeth, that A LIBEL in a ſtrict ſenſe is taken for a malicious defamation, expreſſed either in printing or writing, and tending either to blacken the memory of one who is dead (*a*), or the reputation of one who is alive, and expoſe him to public hatred, contempt, or ridicule.

5. Coke 125. 5. Mod. 165, 166, 167. Salk. 418. Str. 422. 791. 12. Mod. 221. Ld. Ray. 416. 12. Mod. 2193. (*a*) See Rex *v.* Topham, 4. Term Rep. 126.

Sect. 2. But it is ſaid, that in a larger ſenſe the notion of a libel may be applied to any defamation whatſoever, expreſſed either by ſigns or pictures, as by fixing up a gallows againſt a man's door, or by painting him in a ſhameful and ignominious manner.

5. Coke 125. Skin. 123, 124. Salkeld 418. Ld. Ray. 432. 3. Keb. 378.

Sect. 3. And ſince the chief cauſe for which the law ſo ſeverely puniſhes all offences of this nature, is the direct tendency of them to a breach of public peace, by provoking the parties injured, and their friends and families, to acts of revenge, which it would be impoſſible to reſtrain by the ſevereſt laws, were there no redreſs from public juſtice for injuries of this kind, which of all others are moſt ſenſibly felt; and ſince the plain meaning of ſuch ſcandal as is expreſſed by ſigns or pictures, is as obvious to common ſenſe, and as eaſily underſtood by every common capacity, and altogether as provoking, as that which is expreſſed by writing or printing, why ſhould it not be equally criminal?

1. Lev. 139. 5. Coke 125. 12. Coke 35. Raymond 201. Stra. 422. 898. Savil 49. Salk. 49. 418. 1. Sid. 270, 271. 3. Inſt. 174.

Sect.

Hobart 215. Popham 139. 2. Wilſon 203. 2. Burrow 980. 2. Mod. 119. 4. Mod. 86 4. Read Stat. Law 151. Barn. 305. 289. Seſſ. Caſes 30. Popham 252. Hobart 215. Keble 293. Moor 627. R. Abr. 37. Fitzg. 121. 2. Str. 898.

Sect. 4. And from the ſame ground it ſeemeth clearly to follow, that ſuch ſcandal as is expreſſed in a ſcoffing and ironical manner, makes a writing as properly a libel, as that which is expreſſed in direct terms; as where a writing in a taunting manner reckoning up ſeveral acts of public charity done by one, ſays, "You will not play the Jew, nor "the hypocrite," and ſo goes on in a ſtrain of ridicule to inſinuate, that what he did was owing to his vain-glory; or where a writing, pretending to recommend to one the characters of ſeveral great men for his imitation, inſtead of taking notice of what they are generally eſteemed famous for, pitched on ſuch qualities only which their enemies charged them with the want of; as by propoſing ſuch a one to be imitated for his courage, who is known to be a great ſtateſman but no ſoldier; and another to be imitated for his learning, who is known to be a great general, but no ſcholar, &c. which kind of writing is as well underſtood to mean only to upbraid the parties with the want of thoſe qualities, as if it had directly and expreſly done ſo.

(a) Hurt's Caſe, Trin. 12. Annæ. 3. Mod. 68. 12. Mod. 139. Ld. Raymond 879. 2. Atkin. 470.

Sect. 5. And from the ſame foundation it hath alſo been reſolved (a), that a defamatory writing expreſſing only one or two letters of a name in ſuch a manner that, from what goes before and follows after, it muſt needs be underſtood to ſignify ſuch a particular perſon, in the plain, obvious, and natural conſtruction of the whole, and would be perfect nonſenſe if ſtrained to any other meaning, is as properly a libel, as if it had expreſſed the whole name at large; for it brings the utmoſt contempt upon the law, to ſuffer its juſtice to be eluded by ſuch trifling evaſions: and it is as ridiculous abſurdity to ſay, that a writing which is underſtood (b) by every the meaneſt capacity, cannot poſſibly be underſtood by a Judge and jury.

(b) On application for an information, ſome friend to the party complaining ſhould by affidavit ſtate that he has read the libel, and underſtands and believes it to mean the party. Note in 3. Bac. Abr. 493.

5. Coke 125. Hobart 253. Moore 627. Strange 498. 3. Bacon 495. 9. St. Tr. 275.

Sect. 6. And from the ſame ground it farther doth appear, that it is far from being a juſtification of a libel, that the contents thereof are true (1), or that the perſon upon whom it is made had a bad reputation; ſince the greater appearance there is of truth in any malicious invective, ſo much the more provoking it is.

(1) In *an action*, the truth of a libel may be pleaded in juſtification, Hob. 253. And even on a motion for *an information*, the truth or falſehood of the libellous matter will conſiderably influence the Court either to refuſe or to grant it, Str. 498. An affidavit therefore, except in particular caſes, is always required from the party applying, ſtating poſitively and directly that the contents of the imputed libel are not true, Rex *v.* Miles, Dougl. 271. Rex *v.* Buckerton, 1. Str. 498. Rex *v.* Bate, Doug. 572. Or the Court will leave the injury to be remedied in the ordinary courſe of juſtice by *action* or *indictment*, Str. 498. But the Court will not grant this extraordinary remedy

medy by *information*, nor ſhould a grand jury find an *indictment*, unleſs the offence be of ſuch ſignal enormity that it may reaſonably be conſtrued to have a tendency to diſturb the peace and harmony of the community. In ſuch a caſe the public are juſtly placed in the character of an offended proſecutor, to vindicate the common right of all, though violated only in the perſon of an individual; for the malicious publication of even truth itſelf cannot in true policy be ſuffered to interrupt the tranquillity of any well-ordered ſociety. This is a principle ſo rational and pure, that it cannot be tainted by the vulgar odium which has accompanied the derivation of the doctrine from the tyranny of the ſtar-chamber; the adoption of it by the worſt of courts can never weaken its authority, and without it all the comforts of ſociety might with impunity be hourly endangered or deſtroyed. Vide Law of Libels.

Sect. 7. Nor can there be any doubt but that a writing which defames *private perſons* only, is as much a libel as that which defames perſons intruſted with a *public capacity*, inaſmuch as it manifeſtly tends to create ill blood, and to cauſe a diſturbance of the public peace.

5. Coke 125. 1. Sid. 219. 271. 3. Inſt. 174. Cro. Car. 175. 504. 2. Roll. 86. 3. Mod. 139. Comb. 65. Carth. 15. Hard. 470. Skin. 123. Keb. 773. St. Tr. 2. 977.

However it is certain, that it is a very high aggravation of a libel that it tends to ſcandalize the government, by reflecting on thoſe who are intruſted with the adminiſtration of public affairs, which doth not only endanger the public peace, as all other libels do, by ſtirring up the parties immediately concerned in it to acts of revenge, but alſo has a direct tendency to breed in the people a diſlike of their governors, and incline them to faction and ſedition.

Sect. 8. But it hath been reſolved, that no falſe or ſcandalous matter contained in (*a*) a petition to a committee of parliament, or in (*b*) articles of the peace exhibited to juſtices of peace, or in any other (*c*) proceeding in a regular courſe of juſtice, will make the complaint amount to a libel; for it would be a great diſcouragement to ſuitors to ſubject them to public proſecutions, in reſpect of their applications to a court of juſtice. And the chief intention of the law in prohibiting perſons to revenge themſelves by libels, or any other private manner, is to reſtrain them from endeavouring to make themſelves their own judges, and to oblige them to refer the deciſion of their grievances to thoſe whom the law has appointed to determine them.

(*a*) Hard. 470. 1. Lev. 240. 1. Sid. 414, 415. 1. Saund. 131. 2. Keb. 832. (*b*) 4. Coke 14. (*c*) Dyer 285. 2. Inſt. 228. Bull. N. P. 6. Moor 627. 2. Burr. 817.

Alſo (*d*) it ſeemeth to have been holden by ſome, that no want of juriſdiction in the court, to which ſuch a complaint ſhall be exhibited, will make it a libel, becauſe the miſtake of the proper court is not imputable to the party, but to his counſel. Yet if it ſhall manifeſtly appear from the whole circumſtances of the caſe, that a proſecution is intirely falſe, malicious, and groundleſs, and commenced, not with a deſign to go through with it, but only to expoſe the defen-

(*d*) 2. Keb. 832. 2. Inſt. 228. 2. And. 28. Moor 143. 705. 820. Popham 152. Con. 4. Co. 14. 4. Com. Dig. 152.

Dyer 285. Yelv. 117. 2. Bulſt. 269. Godbolt 340. Palm. 145. 180. Vent. 23. 12. Coke 103. 2. Mod. 119. 2. And. 28.

dant's character under the ſhew of a legal proceeding; I cannot ſee any reaſon why ſuch a mockery of public juſtice ſhould not rather aggravate the offence than make it ceaſe to be one, and make ſuch ſcandal a good ground of an indictment at the ſuit of the king, as it makes the malice of their proceeding a good foundation of an action on the caſe at the ſuit of the party, whether the Court had a juriſdiction of the cauſe or not.

See 1. Danv. Abr. 208, 209, 210, 211. and the foregoing Chapter of Conſpiracy. Moor 627.

But it is ſaid, that no preſentment of a grand jury can be a libel, not only becauſe perſons who are ſuppoſed to be returned without their own ſeeking, and are ſworn to act impartially, ſhall be preſumed to have proper evidence for what they do, but alſo becauſe it would be of the utmoſt ill conſequence any way to diſcourage them from making their inquiries with that freedom and readineſs which the public good requires. From which conſiderations, it ſeems reaſonable to exempt them from the fear of any kind of proſecution in reſpect of their inquiries, as has been ſhewn more at large in the chapter of Conſpiracy.

Sect. 9. However it ſeems clear, that no writing whatſoever is to be eſteemed a libel, unleſs it reflect upon ſome particular perſon (*a*).

(*a*) But ſee Rex *v.* Curl, 2. Str. 788. Rex *v.* Woolſton, 2. Str. 834. Reg. *v.* Bedford, 2. Str. 789. Rex *v.* Watſon, 2. Term Rep. 199. contra.

Kely. 238. Salk. 224. Ld. Ray. 486. 4. Read S. L. 151. Forteſ. 98. Seſſ. Ca. 29. 12. Mod. 139.

And it ſeems, that a writing full of obſcene ribaldry, without any kind of reflection upon any one, is not puniſhable at all by any proſecution at common law, as I have heard it agreed in the court of king's bench (2); yet it ſeems, that the author may be bound to his good behaviour, as a ſcandalous perſon of evil fame.

218. 220. Ld. Ray. 879. 2. Strange 934. Bar. K. B. 138. 166. See the Chapter concerning Surety for the good Behaviour, 1. Vent. 10. 16.

(2) It was ſo agreed in Read's Caſe, 11. Mod. 142.; but in the caſe of the King *v.* Curl, Mich. 1. Geo. 2. for publiſhing an obſcene book, the Court were unanimous, that it is a temporal offence, and that Read's caſe was not law, Str. 788. 834. Alſo 4. Burr. 2527.

As to THE SECOND POINT, *viz.* Who are liable to be puniſhed for a libel.

Almon's Caſe, 5. Burr. 2666. 9. Co. 59. Moor 267. 627. 813.

Sect. 10. It is certain, that not only he who compoſes, or procures another to compoſe it, but alſo that he who publiſhes, or procures another to publiſh it, are in danger of being puniſhed for it.

Strange 77. B. N. P. 6. Fitzgibbon 47. Con. 9. Co. 59. L. Ray. 414. 417. 729. 4. Com. Dig. 152. B. 2. 5. Co. 125. 12. Co. 35. Comb. 359. 5. Mod. 167. 163. Vide Salk. 417, 418, 419. 646. 281. Carthew 405. to 410.

And

And it is ſaid not to be material whether he who diſperſes a libel knew any thing of the contents or effect of it or not; for nothing could be more eaſy than to publiſh the moſt virulent papers with the greateſt ſecurity, if the concealing the purport of them from an illiterate publiſher would make him (3) ſafe in diſperſing them. Moor 627. 9. Co. 59.

(3) But if a printer is confined in priſon, to which his ſervants have no acceſs, and they publiſh a libel without his privity, the publication of it ſhall not be imputed to him, Woodfall's caſe, Eſſay on Libels, p. 18. Sed vide Salmon's Caſe, B. R. Hilary 1777, and Rex *v.* Almon, 5. Burr. 2687.

Alſo it hath been ſaid, that if he who had either read a libel himſelf, or hath heard it read by another, do afterward maliciouſly read or repeat any part of it in the preſence of others, or lend or ſhew it to another, he is guilty of an unlawful publication of it. Moor 627. 813. 9. Co. 59. 5. Mod. 167.

Alſo it hath been holden, that the copying of a libel ſhall be a concluſive evidence of the publication of it, unleſs the party can prove that he delivered it to a magiſtrate to examine it, in which caſe the act ſubſequent is ſaid to explain the intention precedent. 9. Co. 59. Moor 813.

But it ſeems to be the better opinion, that he who firſt writes a libel dictated by another, is thereby guilty of making it, and conſequently puniſhable for the bare writing; for it was no libel till it was reduced to writing. 5. Mod. 167. Salk. 417.

Sect. 11. Alſo it hath been reſolved (*a*), that the ſending of a letter full of provoking language to another, without publiſhing it, is highly puniſhable; and if the bare making of a libel be an offence, whether it be publiſhed or not, as it ſeemeth to be holden in ſome (*b*) books, ſurely the ſending of it to the party reflected upon, muſt be a much greater crime, inaſmuch as it ſo manifeſtly tends to a diſturbance of the peace. (*a*) 1. Keb. 931. 2. Keb. 261, 58. Ld. Ray. 341. 417. 486. Skin. 123. 12. Mod. 218. 11. Mod. 99. 3. Bac. Abr. 498.

1. Lev. 139. 240. 12. Co. 34. Pop. 139. 136. Ray. 201. 1. Sid. 270. 444. 1. Mod. 58. Hob. 62. 215. 3. Inſt. 174. 4. Inſt. 180, 181. (*b*) 5. Mod. 167. 9. Co. 59. 1. Keb. 832. 12. Co. 35. See Fitzg. 47. 12. Vin. Ab. 229. Barn. 306. Seſſ. Caſes, 33.

Sect. 12. Alſo it ſeems to be agreed, that he who delivers a paper full of reflections on any perſon, in nature of a petition to a committee of parliament, to any other perſon except the members of parliament, may be puniſhed as the publiſher of a libel, in reſpect of ſuch a diſperſing thereof among thoſe who have nothing to do with it. Keb. 832. 1. Saund. 133. 1. Lev. 240. 1. Sid. 414, 415.

Sect. 13. But it hath been reſolved, that he who barely reads a libel in the preſence (*c*) of another, without knowing (*c*) 9. Co. 59. Moor 813.

it before to be a libel, or who hearing a libel read by another (*a*) laughs at it, or who (*b*) barely says, that such a libel is made upon such a person, whether he speak it with or without malice, or who is only proved to have had a libel in his custody, shall not in respect of any such act be adjudged the publisher of it. But the having in one's custody a written copy of a libel publicly known, is an evidence of the publication of it.

(*a*) 9. Co. 59. Moor 813.
(*b*) Moor 627. 1. Vent. 31. 2. Keb. 502. Salk. 418. Carth. 409.

Sect. 14. Also it hath been holden, that he who repeats part of a libel in merriment without malice, and with no purpose of defamation, is no way punishable; but it seemeth, that the reasonableness of this opinion may justly be questioned; for jests of this kind are not to be endured, and the injury to the reputation of the party grieved is no way lessened by the merriment of him who makes so light of it.

Moor 627. 9. Co. 59.

Sect. 15. But it seemeth to be settled, that the bare printing of a petition to a committee of parliament (which would be a libel against the party complained of, if it were made for any other purpose than as a complaint in a course of justice) and delivering copies thereof to the members of the committee, shall not be looked upon as the publication of a libel, inasmuch as it is justified by the order and course of proceedings in parliament, whereof the king's courts will take judicial notice.

15. Vin. Abr. 88. 1. Keb. 832. 1. Saund. 133. 1. Lev. 240. 1. Sid. 414, 415. Skin. 124. Hard. 470.

† As to THE THIRD POINT, *viz.* In what manner libels are to be tried.

† *Sect.* 16. It was held, that what is or is not a libel is *matter of law* upon the face of the record, for the consideration of the Court (*c*), and that therefore on the trial of an indictment for a libel, the only question for the consideration of the jury was the fact of publishing, and the truth of the *innuendoes* (*d*), and that if the paper was not a libel, the defendant after conviction might move the Court in arrest of judgment.

(*c*) 5. Burr. 2666.
(*d*) Rex *v.* Dean of St. Asaph, 3. T. Rep. 428. notis. Rex *v.* Withers, 3. T. Rep. 428.

† *Sect.* 17. But by the statute 32. Geo. 3. c. 60. it is recited, that doubts had arisen, whether on the trial of an "indictment or information for the making or publishing "any libel, where an issue or issues are joined between the "king and the defendant or defendants, on the plea of not "guilty pleaded, it be competent to the jury impanelled to "try the same to give their verdict upon the whole matter "in issue; and enacted, that on every such trial, the jury "sworn to try the issue may give a general verdict of guilty "or not guilty, upon the whole matter put in issue upon "such

" ſuch indictment or information; and ſhall not be required " or directed, by the Court or Judge before whom ſuch " indictment or information ſhall be tried, to find the de- " fendant or defendants guilty, merely on the proof of the " publication by ſuch defendant or defendants of the paper " charged to be a libel, and of the ſenſe aſcribed to the ſame " in ſuch indictment or information."

† *Sect.* 18. But by 32. Geo. 3. c. 60. ſ. 2. it is provided, " That on every ſuch trial, the Court or Judge before whom " ſuch indictment or information ſhall be tried, ſhall, ac- " cording to their or his diſcretion, give their or his " opinion and directions to the jury on the matter in iſſue " between the king and the defendant or defendants, in like " manner as in other criminal caſes."

† *Sect.* 19. By 32. Geo. 3. c. 60. ſ. 3. it is alſo provided, " That nothing herein contained ſhall extend, or be con- " ſtrued to extend, to prevent the jury from finding a ſpecial " verdict, in their diſcretion, as in other criminal caſes."

† *Sect.* 20. And by 32. Geo. 3. c. 60. ſ. 4. " In caſe the " jury ſhall find the defendant or defendants guilty, it ſhall " and may be lawful for the ſaid defendant or defendants to " move in arreſt of judgment, on ſuch ground and in ſuch " manner as by law he or they might have done before the " paſſing of this act; any thing herein contained to the " contrary notwithſtanding."

As to THE FOURTH POINT, *viz.* In what manner offenders of this kind are to be puniſhed.

Sect. 21. There ſeemeth to be no doubt, but that they may be condemned to pay ſuch fine, and alſo to ſuffer ſuch corporal puniſhment, as to the Court in diſcretion ſhall ſeem proper, according to the heinouſneſs of the crime, and the circumſtances of the offender.

Cro. Car. 175. 504.
3. Inſt. 174.
2. Inſt. 228.
12. Co. 134.
Stra. 934.
8. Mod. 178.
Forteſ. 37. 201.

CHAPTER THE SEVENTY-FOURTH.

OF THE OFFENCE OF KEEPING A BAWDY-HOUSE.

THE offence of keeping a bawdy-houſe being of ſo groſs a nature, and there being alſo ſo few queſtions relating to it worth conſidering, I ſhall paſs it over with theſe following obſervations:

2. Rol. 39. 79. 83. 4. Blac. Com. 29. 64. 167. 3. Burn. 95. 2. Ecc. Law. Kitchen 11. 3. Inſt. 205. Salk. 382. 2. Ld. Ray. 197. Dalt. p. 262. Popham 208. 1. Sid. 168, 410. 2. Burr. 1232. Salk. 384. 10. Mod. 63. 336.

FIRST, That it comes under the cognizance of the temporal law as a *common nuiſance*, not only in reſpect of its endangering the public peace, by drawing together diſſolute and debauched perſons, but alſo in reſpect of its apparent tendency to corrupt the manners of both ſexes, by ſuch an open profeſſion of lewdneſs.

SECONDLY, That a *feme-covert* is puniſhable for this offence (1) as much as if ſhe were ſole, as more fully hath been ſhewn, chapter the firſt, ſection 12.

THIRDLY, That a lodger who keeps only a ſingle room for the uſe of bawdry, is indictable for keeping a bawdy-houſe; but that the bare ſolicitation of chaſtity is not indictable.

FOURTHLY, That offenders of this kind are puniſhable not only with fine and impriſonment, but alſo with ſuch infamous puniſhment as to the Court in diſcretion ſhall ſeem proper.

(1) Therefore ſhe may have an action for ſaying that ſhe keeps a bawdy-houſe, Sayer 33.

CHAPTER THE SEVENTY-FOURTH,

CONTINUED.

OF THE OFFENCE

OF KEEPING

A DISORDERLY HOUSE.

† AS to the offence of keeping an unlicenſed houſe. It is recited by 25. Geo. 2. c. 36. made perpetual by 28. Geo. 2. c. 19. "That whereas the multitude of places of entertainment for the lower ſort of people is another great cauſe of thefts and robberies, as they are thereby tempted to ſpend their ſmall ſubſtance in riotous pleaſures, and in conſequence are put on unlawful methods of ſupplying their wants, and renewing their pleaſures;" in order therefore to prevent the ſaid temptation to thefts and robberies, and to correct as far as may be the habit of idleneſs, which is become too general over the whole kingdom, and is productive of much miſchief and inconvenience, it is enacted, "That from and after the 1ſt day of *December* 1752, any "houſe, room, garden, or other place kept for publick "dancing, muſick, or other publick entertainment of the "like kind, in the cities of *London* and *Weſtminſter*, or "within twenty miles thereof, without a licence had for "that purpoſe, from the laſt preceding *Michaelmas* quarter-"ſeſſions of the peace, to be holden for the county, city, "riding, liberty, or diviſion in which ſuch houſe, room, "garden, or other place is ſituate (who are hereby autho-"rized and impowered to grant ſuch licences as they in "their diſcretion ſhall think proper), ſignified under the "hands and ſeals of four or more of the juſtices there aſ-"ſembled, ſhall be deemed a diſorderly houſe or place: "and every ſuch licence ſhall be ſigned and ſealed by the "ſaid juſtices in open court, and afterwards be publickly "read by the clerk of the peace, together with the names "of the juſtices ſubſcribing the ſame; and no ſuch licence "ſhall

Unlicenſed places of entertainment deemed diſorderly houſes.

" ſhall be granted at any adjourned ſeſſions; nor ſhall
" any fee or reward be taken for any ſuch licence. And it
Conſtables may ſeize perſons. " ſhall and may be lawful to and for any conſtable, or other
" perſon, being thereunto authorized, by warrant under
" the hand and ſeal of one or more of his majeſty's juſtices
" of the peace of the county, city, riding, diviſion, or
" liberty where ſuch houſe or place ſhall be ſituate, to enter
" ſuch houſe or place, and to ſeize every perſon who ſhall
" be found therein, in order that they may be dealt with
Perſon keeping the ſame forfeit 100l. " according to law; and every perſon keeping ſuch houſe,
" room, garden, or other place, without ſuch licence as
" aforeſaid, ſhall forfeit the ſum of one hundred pounds to
" ſuch perſon as will ſue for the ſame, and be otherwiſe
" puniſhable as the law directs in caſes of diſorderly
" houſes."

† *Sect.* 3. But by 25. Geo. 2. c. 36. ſ. 2. it is provided,
Licenſed places to have an inſcription over them, and not be opened before five in the evening. " That in order to give publick notice what places are li-
" cenſed purſuant to this act, there ſhall be affixed and kept
" up in ſome notorious place over the door or entrance of
" every ſuch houſe, room, garden, or other place kept for
" any of the ſaid purpoſes, and ſo licenſed as aforeſaid, an
" inſcription in large capital letters, in the words follow-
" ing. *viz.* LICENSED PURSUANT TO ACT OF PARLIA-
" MENT OF THE TWENTY-FIFTH OF KING GEORGE THE
" SECOND; and that no ſuch houſe, room, garden, or other
" place kept for any of the ſaid purpoſes, although licenſed
" as aforeſaid, ſhall be open for any of the ſaid purpoſes be-
" fore the hour of five in the afternoon; and that the af-
" fixing and keeping up of ſuch inſcription as aforeſaid,
" and the ſaid limitation or reſtriction in point of time,
" ſhall be inſerted in, and made conditions of, every
" ſuch licence; and in caſe of any breach of either of
" the ſaid conditions, ſuch licence ſhall be forfeited, and
" ſhall be revoked by the juſtices of peace in their next
" general or quarter ſeſſions, and ſhall not be renewed;
On breach of conditions licence revoked. " nor ſhall any new licence be granted to the ſame perſon
" or perſons, or any other perſon on his or their or any
" of their behalf, or for their uſe or benefit, directly or in-
" directly, for keeping any ſuch houſe, room, garden, or
" other place, for any of the purpoſes aforeſaid."

Places excepted. † *Sect.* 4. By 25. Geo. 2. c. 36. ſ. 3. it is alſo pro-
vided, " That nothing in this act contained ſhall ex-
" tend, or be conſtrued to extend, to the theatres royal
" in *Drury-lane* and *Covent-garden*, or the theatre com-
" monly called *The King's Theatre* in the *Hay-market*,
" or any of them; nor to ſuch performances and
" publick

" publick entertainments as are or ſhall be lawfully exer-
" ciſed and carried on under or by virtue of letters patent,
" or licence of the crown, or the licence of the lord cham-
" berlain of his majeſty's houſehold; any thing herein con-
" tained notwithſtanding."

† *Sect.* 5. And by 25. Geo. 2. c. 36. ſ. 4. in order to encourage proſecutions againſt perſons keeping bawdy-houſes, gaming-houſes, or other diſorderly houſes, it is enacted, " That if any two inhabitants of any pariſh or " place, paying ſcot, and bearing lot therein, do give no-" tice in writing to any conſtable (or other peace-officer of " the like nature, where there is no conſtable) of ſuch pa-" riſh or place, of any perſon keeping a bawdy-houſe, " gaming-houſe, or any other diſorderly houſe, in ſuch " pariſh or place, the conſtable, or ſuch officer as aforeſaid, " ſo receiving ſuch notice, ſhall forthwith go with ſuch in-" habitants to one of his majeſty's juſtices of the peace of " the county, city, riding, diviſion or liberty in which " ſuch pariſh or place does lie; and ſhall, upon ſuch inha-" bitants making oath before ſuch juſtice, that they do be-" lieve the contents of ſuch notice to be true, and entering " into a recognizance in the penal ſum of twenty pounds " each, to give or produce material evidence againſt ſuch " perſon for ſuch offence, enter into a recognizance in " the penal ſum of thirty pounds, to proſecute with effect " ſuch perſon for ſuch offence at the next general or " quarter ſeſſion of the peace, or at the next aſſizes " to be holden for the county in which ſuch pariſh or " place does lie, as to the ſaid juſtice ſhall ſeem meet; " and ſuch conſtable or other officer ſhall be allowed " all the reaſonable expences of ſuch proſecution, to be aſ-" certained by any two juſtices of the peace of the county, " city, riding, diviſion, or liberty where the offence ſhall " have been committed, and ſhall be paid the ſame by the " overſeers of the poor of ſuch pariſh or place; and in caſe " ſuch perſon ſhall be convicted of ſuch offence, the over-" ſeers of the poor of ſuch pariſh or place ſhall forthwith " pay the ſum of ten pounds to each of ſuch inhabitants; " and in caſe ſuch overſeer ſhall neglect or refuſe to pay " to ſuch conſtable, or other officer, ſuch expences of the " proſecution as aforeſaid, or ſhall neglect or refuſe to pay " upon demand the ſaid ſums of ten pounds and ten pounds, " ſuch overſeers, and each of them, ſhall forfeit to the per-" ſon entitled to the ſame, double the ſum ſo refuſed or " neglected to be paid."

Conſtable's duty upon notice of perſons keeping a bawdy-houſe, &c.

The charges of proſecution, and 10l. on conviction to each of the two inhabitants, to be paid by the overſeers.

Sect.

Perſon keeping ſuch bawdy-houſe, &c. to be bound over.

† *Sect.* 6. By 25. Geo. 3. c 36. ſ. 6. it is further enacted, "That upon ſuch conſtable or other officer entering "into ſuch recognizance to proſecute as aforeſaid, the "ſaid juſtice of the peace ſhall forthwith make out his "warrant to bring the perſon ſo accuſed of keeping a "bawdy-houſe, gaming-houſe, or other diſorderly houſe, "before him, and ſhall bind him or her over to ap-"pear at ſuch general or quarter ſeſſion or aſſizes, there "to anſwer to ſuch bill of indictment as ſhall be "found againſt him or her for ſuch offence; and ſuch "juſtice ſhall and may, if in his diſcretion he thinks fit, "likewiſe demand and take ſecurity for ſuch perſon's good "behaviour in the mean time, and until ſuch indictment "ſhall be found, heard, and determined, or be returned "by the grand jury not to be a true bill."

Conſtable neglecting his duty forfeits 20l.

† *Sect.* 7. And by 25. Geo. 2. c. 36. ſ. 7. "In caſe ſuch "conſtable ſhall neglect or refuſe, upon ſuch notice, to go "before any juſtice of the peace, or to enter into ſuch re-"cognizance, or ſhall be wilfully negligent in carrying on "the ſaid proſecution, he ſhall for every ſuch offence forfeit "the ſum of twenty pounds to each of ſuch inhabitants ſo "giving notice as aforeſaid."

† *Sect.* 8. And by 25. Geo. 2. c. 36. ſ. 8. it is recited, "That whereas, by reaſon of the many ſubtle and crafty "contrivances of perſons keeping bawdy-houſes, gaming-"houſes, or other diſorderly houſes, it is difficult to prove "who is the real owner or keeper thereof, by which means "many notorious offenders have eſcaped puniſhment," and enacted, "That any perſon who ſhall at any time here-"after appear, act, or behave him or herſelf as maſter "or miſtreſs, or as the perſon having the care, govern-"ment, or management of any bawdy-houſe, gaming-"houſe, or other diſorderly houſe, ſhall be deemed and "taken to be the keeper thereof, and ſhall be liable "to be proſecuted and puniſhed as ſuch, notwithſtand-"ing he or ſhe ſhall not in fact be the real owner or "keeper thereof."

Who ſhall be deemed keeper of ſuch bawdy-houſe, &c.

Evidence may be given by inhabitant, &c.

† *Sect.* 9. But by 25. Geo. 2. c. 36. ſ. 9. it is provided, "That upon any ſuch proſecution againſt any perſon for "keeping a bawdy-houſe, gaming-houſe, or other diſorderly "houſe, any perſon may give evidence againſt the defend-"ant, or on behalf of the defendant in ſuch proſecution, "notwithſtanding his or her being an inhabitant or pa-"riſhioner of the ſaid pariſh or place, or having entered "into ſuch recognizance as aforeſaid."

Sect.

† *Sect.* 10. And by 25. Geo. 2. c. 36. ſ. 10. it is further enacted, "That no indictment which ſhall at any time "after the ſaid firſt day of June be preferred againſt any "perſon for keeping a bawdy-houſe, gaming-houſe, or "other diſorderly houſe, ſhall be removed by any writ "of *certiorari* into any other court; but ſuch indict-"ment ſhall be heard, tried, and finally determined, at "the ſame general or quarter ſeſſion or aſſizes, where "ſuch indictment ſhall have been preferred (unleſs the "court ſhall think proper, upon cauſe ſhewn, to ad-"journ the ſame), any ſuch writ or allowance thereof "notwithſtanding." No *certiorari*.

CHAP-

CHAPTER THE SEVENTY-FIFTH.

Of COMMON NUISANCES.

OFFENCES under the degree of capital, more immediately againſt the ſubject, not amounting to an actual diſturbance of the peace, which may be committed by private perſons without any relation to an office, and which are of an inferior nature to the ſix kinds of offences laſt treated of, being neither infamous nor groſly ſcandalous, ſeem to be reducible to the following heads:

1. Such as more immediately affect the publick.

2. Such as more immediately affect the intereſt of particular perſons.

Offences of this kind more immediately affecting the publick, are four-fold.

1. Common nuiſances.

2. Monopolies.

3. Foreſtalling, ingroſſing, and regrating.

4. Barratry.

And firſt of COMMON NUISANCES.

For the better underſtanding whereof I ſhall firſt conſider them in general, and then deſcend to thoſe relating to highways and publick houſes, which ſeem to be the moſt remarkable general heads of this offence.

As to common nuiſances in general I ſhall conſider,

1. What ſhall be ſaid to be a common nuiſance.

2. How it may be removed.

3. How it may be puniſhed.

As to THE FIRST POINT, *viz.* What ſhall be ſaid to be a common nuiſance.

2. R. Abr. 83. *Sect.* 1. It ſeems, that a common nuiſance may be defined to be an offence againſt the publick, either by doing a thing which tends to the annoyance of all the king's ſubjects, or by neglecting to do a thing which the common good requires.

1. R. Abr. 83. Co. Lit. p. 56. *Sect.* 2. But annoyances to the intereſt of particular perſons are not puniſhable by a public proſecution as common nuiſances, but are left to be redreſſed by the private actions of the parties aggrieved by them.

1. Sid. 209. Sayer 169. *Sect.* 3. And from hence it clearly follows, that no indictment for a nuiſance can be good, which lays it to the damage of private perſons only; as where it accuſes a man (a) 2. R. Ab. 83. of (*a*) ſurcharging ſuch a common; or of (*b*) incloſing ſuch 1. Burr. 259. a piece of ground, wherein the inhabitants of ſuch a town 6. Modern 453. have a right of common, to the nuiſance of all the inhabi- 2. Wilſon 57. tants of ſuch a town; or of diſturbing a (*c*) water-courſe (*b*) 27. Aſſ. 6. 2. R. Abr. 83. running to the mill of *J. S. ad grave damnum J. S. et tenen-* C. Eliz. 90. *tium ſuorum*; without ſaying *omnium ligeorum domini regis*; (*c*) 2. R. Ab. 83. or of doing a nuiſance to a thing no way appearing to be 1. Ventr. 26. of a public nature, *ad grave* (*d*) *damnum*, or (*e*) *detrimen-* ( ) 2. R. Ab. 83. (.) 1. Mod 107. *tum*, or (*f*) *commune nocumentum omnium ligeorum domini* (*f*) 1. Roll. 4c 6. *regis prope inhabitantium*. Yet it hath been reſolved, that an 3. Keb. 28. 284. indictment for not repairing a bridge by reaſon whereof it C. Eliz. 414. was ruinous, *ita quod ligei domini regis per eam tranſire non* C. Jac. 382. 1. Saund. 135. *poſſunt*, and concluding, *ad nocumentum eorundem*, is good C. Eliz. 148. without uſing the words *ad nocumentum omnium ligeorum, &c.* 2. Keble 461. for by the king's liege people ſhall be underſtood all his 2. Leon. 183, 184. liege people.

9. Coke 113. 1. Ventris 208.

27. Aſſ. 19, 20. 2. R. Abr. 83, 84. *Sect.* 4. Alſo it is ſaid, that the law hath ſo tender a regard for the intereſt of the king and of religion, that an indictment for doing a thing which plainly appears immediately to tend to the prejudice of either of them, is good, though it does not expreſsly complain of it as a common grievance; and upon this ground it hath been reſolved, that an indictment for converting the king's money to one's own uſe is good, without more. And upon the ſame foundation alſo it hath been holden, that an indictment for breaking and digging up the wall of the church of ſuch a town *ad nocumentum burgi ligeorum domini regis* is good.

Sect.

Sect. 5. Alſo it hath been ſaid, that an indictment of a common ſcold, by the words "*communis rixatrix*," which ſeem to be preciſely neceſſary in every indictment of this kind, is good, though it conclude "*ad commune nocumentum diverſorum*" inſtead of "*omnium, &c.*" perhaps for this reaſon, becauſe a common ſcold cannot but be a common nuſance. And upon the like ground it ſeems that it may probably be argued, that an indictment for laying logs in the ſtream of a navigable publick river, "*ad nocumentum J. S.*" may be maintained, becauſe it cannot but be a common nuſance. And if the law be ſo in this caſe, why ſhould not alſo an indictment ſetting forth a nuſance to a way, and expreſsly and unexceptionably ſhewing it to be a highway, be good, notwithſtanding it conclude "*in nocumentum diverſorum ligeorum, &c.*" without ſaying "*omnium*;" for why ſhould ſuch a concluſion be more neceſſary in an indictment for one kind of nuſance than for any other? And perhaps the (*a*) authorities which ſeem to contradict this opinion, might go upon this reaſon, that in the body of the indictment, it did not appear with ſufficient certainty, whether the way, wherein the nuſance was alledged, were a highway, or only a private way; and therefore that it ſhall be intended from the concluſion of the indictment that it was a private way.

6. Mod. 11. 178. 213. 239. 311. Moor 847. Str. 849. 1247. Bar. K. B. 229. 2. Seſſ. Caſ. 26. 2. Keble 410. 1. Keble 161. 12. Mod. 504. 615. 1. Roll. 201. Sayer 167. 301.

(*a*) C. Eliz. 148. 2. Keble 461. 2. R. Abr. 83. Latch 183.

Sect. 6. There is no doubt but that *common bawdy-houſes* are indictable as common nuſances. Alſo it hath been ſaid, that all *common ſtages* for rope-dancers, and alſo all *common gaming-houſes*, are nuſances in the eye of the law, as hath been more fully ſhewn in the foregoing chapter; not only becauſe they are great temptations to idleneſs, but alſo becauſe they are apt to draw together great numbers of diſorderly perſons, which cannot but be very inconvenient to the neighbourhood.

3. Inſt 205. Kitchen 11. 2. Barr. 1232. 1. Modern 76. 2. Keble 846. 3. Keble 464. 5. Modern 142. 1. Vent. 169. 10. Mod. 336. 12. Mod. 342.

Sect. 7. Alſo it hath been holden, that a *common play-houſe* may be a nuſance, if it draw together ſuch numbers of coaches or people, &c. as prove generally inconvenient to the places adjacent. And it ſeems to be a proper diſtinction between play-houſes and the nuſances mentioned in the foregoing ſection, that play-houſes, having been originally inſtituted with a laudable deſign of recommending virtue to the imitation of the people, and expoſing vice and folly, are not nuſances in their own nature, but may only become ſuch by accident, whereas the others cannot but be nuſances.

1. Roll. 109. 5. Mod. 142. See Rushworth's Coll. part 2. vol. 1. fol. 220. 247. Skin. 625 to 630.

N. B. For the offence of acting plays without licence, vide infra ch. 87.

Sect. 8. It hath been reſolved, that neither an old nor a new (*a*) dovecote, whether it were erected by the lord of a manor, or one of his tenants, is a common nuſance; for if a dovecote were a common nuſance, it could never become lawful by any licence or preſcription whatſoever, becauſe every nuſance is a *malum in ſe*; but it is certain, that a dove-houſe may be juſtified by a preſcription, and that it is ſo far countenanced by the law, as to be (*b*) demandable in a *præcipe* before any land whatſoever which is not built upon, and that the owner may juſtify the taking another's (*c*) hawk, which he ſhall find at his dove-houſe, flying at his pigeons (*d*); and from hence it ſeems clearly to follow, that though a tenant, who builds a dove-houſe without the licence of the lord of the manor, may perhaps be liable to an action on the caſe at the ſuit of ſuch lord, whoſe prerogative is ſaid to be incroached upon by the erecting ſuch a houſe without his licence, yet he cannot be puniſhed for it by a public proſecution.

(*a*) 2. R. Abr. 138. 139. 265. 2. Roll. 4. 30. C. Jac. 382. 491. Moor 238. 1. Roll. 136. 201. Poph. 143. Con. 5. Co. 104.

(*b*) F. N. B. 2. c.

(*c*) 16. E. 4. 7 b. Godb. 259.

(*d*) *Quære* Moor 580. & 621. C. Eliz. 548.

N. B. For the nuſance of keeping pigeons, vide 1. Jac. 1. c. 27. and 2. Geo. 3. c. 29.

Sect. 9. But perhaps it may be argued, that if this reaſoning be good, it will follow from the ſame ground, that a gate erected in a highway will be alſo no nuſance; becauſe if it were, it could not be juſtified by any preſcription, as it is agreed that it may be. But to this it may be anſwered, that the erecting of ſuch a gate is therefore a nuſance, becauſe it interrupts the people in that free and open paſſage which they before enjoyed, and were lawfully entitled to; but where ſuch a gate has continued time out of mind, it ſhall be intended, that it was ſet up at firſt by conſent, on a compoſition with the owner of the land on the laying out the road, in which caſe the people had never any right to a freer paſſage than what they ſtill enjoy.

1. Jon. 221. C. Car. 184. 1. Bulſ. 203. 2. R. Abr. 137. Kit. 11. 23. St. 18. Ed. 2.

Sect. 10. It hath been holden, that it is no common nuſance to make candles in a town, becauſe the needfulneſs of them ſhall diſpenſe with the noiſomeneſs of the ſmell. But the reaſonableneſs of this opinion ſeems juſtly to be queſtionable, becauſe, whatever neceſſity there may be that candles be made, it cannot be pretended to be neceſſary to make them in a town; and ſurely the trade of a brewer is as neceſſary as that of a chandler; and yet it ſeems to be agreed, that a brew-houſe, erected in ſuch an inconvenient place wherein the buſineſs cannot be carried on without greatly incommoding the neighbourhood, may be indicted as a common nuſance; and ſo in the like caſe may a glaſs-houſe or ſwine-yard.

2. R Abr. 139. Cont. 3. Mod. 138. Cro. Car. 510. Morley and Pragnell, 1. Bur. 336. 2. Keb. 570. Vide 1. Danv. 173, 174. Salk. 458. 460. Hutt. 136. Palmer 536. Ventris 26. 2. Ld. Ray. 1163.

Sect.

Sect. 11. It ſeems certain, that it is a common nuſance to divert part of a public navigable river, whereby the current of it is weakened, and made unable to carry veſſels of the ſame burthen as it could before. Alſo it hath been holden to be a common nuſance to divide a houſe in a town for poor people to inhabit in, by reaſon whereof it will be more dangerous in the time of infection of the plague (1).

Noy 403. 3. Keble 640. 759. 11. Modern 3. Fitz. 179. 2. R. Abr. 139. 1. Lut. 169.

(1) Or to make great noiſes in the night with a ſpeaking trumpet, to the diſturbance of the neighbourhood, Str. 704. Or permitting a houſe near the highway to continue in a ruinous condition, Salk. 357. Or laying timber in a public river, although the ſoil on which it is laid belong to the party, provided it obſtructs the neceſſary intercourſe, 3. Bac. Ab. 686. Str. 1247. Or to place a floating dock in the river, although beneficial in repairing ſhips, Surry aſſizes at Kingſton, 1785. Or to travel with a cart on a common pack or horſeway, and by plowing it up to render the uſe of it inconvenient, 6. Mod. 145. Or to put a ſhip of 300 tons into Billingſgate dock; for although it is a common dock, it is only for the reception of ſmall veſſels freighted with proviſions for the London market, 2. Hawk. c. 25. ſ. 35. Or to manufacture acid ſpirit of ſulphur, vitriol, or aqua fortis in the vicinity of dwelling-houſes, 1. Burr. 333. Vide alſo 13. Ed. 1. c. 24. 12 Rich. 2. c. 13. 2. W. & M. ſ. 2. c. 8. 30. Geo. 2. c. 22. 31. Geo. 2. c. 17. reſpecting nuſances in the cities of London and Weſtminſter.

But the fears of mankind, however reaſonable, will not create a nuſance; therefore it is no nuſance to erect a building for the purpoſes of inoculation, 3. Atkyns 21. 726. 750. Nor to lay bricks in the river Thames in the party's own fiſhery, 3. Burr. 1770. Nor to violate a public law, Black. Rep. 570. Nor to ſtop up a proſpect, 3. Salk. 247. 459. Cro. Eliz. 118. And whether coney burrows are a nuſance, ſee 1. Burr. 259. 6. Mod. 453. See alſo 11. Mod. 7. and 8.

Of nuſances in making fireworks.

† By 9. & 10. Will. 3. c. 7. it is enacted, "That it ſhall "not be lawful for any perſon to make, or cauſe to be "made, or to ſell or utter, or offer or expoſe to ſale any "fireworks, or any caſes, moulds, or implements for "making the ſame, on pain of 5l. on conviction be"fore one magiſtrate, on the oath of two witneſſes. Or "for any perſon to permit or ſuffer fireworks to be caſt, "thrown, or fired from out of or in his, her, or their "houſe, lodgings, or habitations, or from, out of, or in "any part or place thereto belonging or adjoining, into "any public ſtreet, highway, road, or paſſage, on pain "of 20s. on conviction as aforeſaid. Or for any perſon "to caſt, throw, or fire, or to be aiding or aſſiſting therein, "on pain of 20s and that every ſuch offence is and ſhall "be adjudged a common nuſance."

Of nuſances by erecting lotteries, &c.

† By 10. & 11. Will. 3. c. 17. it is alſo enacted, "That "all miſchievous games called lotteries, and all other lot"teries, are common and public nuſances; and that all "grants, patents, and licences for ſuch lotteries, or any "other lotteries, are void and againſt law; and whoever "ſhall exerciſe, keep open, ſhew, or expoſe to be played

" at, drawn at, or thrown at, or ſhall draw, play, or throw " at any ſuch lottery, or other lotteries, either by dice, " lots, cards, balls, or any other numbers or figures, or " any way whatſoever, ſhall forfeit 500 l. for every offence, " one third to the king, one third to the poor, and the " other third, together with double coſts, to the party that " ſhall inform and ſue for the ſame, and the parties ſhall " alſo be proſecuted as common rogues. And whoever " ſhall play, throw, or draw at any ſuch lotteries, ſhall for- " feit 20 l. in manner aforeſaid."

Of nuſances by bubbling the publick.

† By 6. Geo. 1. c. 18. ſ. 19. it is alſo enacted, " That all " undertakings, attempts, and projects by public ſub- " ſcriptions, for adventuring in certain ſchemes of com- " merce, tending to the common grievance of his majeſty's " ſubjects, or a great number of them, and the receiving " and paying of any money upon ſuch ſubſcriptions, &c. " and more particularly the preſuming to act as a body " corporate, or to raiſe transferrable funds, or pretending " to act under any charter formerly granted from the crown " for any particular or ſpecial purpoſe therein expreſſed, by " perſons making or endeavouring to make uſe of ſuch " charter, for any ſuch other purpoſe not thereby intended, " and all acting or pretending to act under any ſuch obſolete " charter, &c. &c. ſhall be deemed a public nuſance and " nuſances, the offenders made liable to ſuch fines, penal- " ties, and puniſhments as are inflicted on a conviction " for common and public nuſances, and moreover to any " of the pains and penalties of *præmunire*."

Caywood's Caſe, Strange 472.

† It has been determined on this ſtatute, that the Court has a diſcretionary power to inflict all, or only ſome, of the penalties of a *præmunire*, upon a conviction of the offence therein mentioned.

As to THE SECOND POINT, *viz.* How a nuſance may be removed.

2. R. Abr. 44. C. Car. 184. 1. Jon. 221. 11. Mod. 7, 8. Moor 374. 2. R. Abr. 145. Salkeld 459. Yelverton 142. Ld Raym. 264. 5. Coke 101. 9. Coke 54. Burrows 2116. 1. Roll. 9. 35.

Sect. 12. It ſeemeth to be certain, that any one may pull down or otherwiſe deſtroy a common nuſance, as a new gate, or even a new houſe erected in a highway, &c.; for if one whoſe eſtate is, or may be, prejudiced by a private nuſance actually erected, as a houſe hanging over his ground, or ſtopping his lights, &c. may juſtify the entering into another's ground, and pulling down and deſtroying ſuch a nuſance, whether it were erected before or ſince he came to the eſtate, ſurely it cannot but follow *à fortiori*, that any one may lawfully deſtroy a common nuſance: and

B. Niſ. 14. 1. Jon. 221. Salkeld 458.

as

as the law is now holden, it ſeems, that in a plea juſtifying the removal of the nuſance, you need not ſhew that you did as little damage as might be (*a*).

(*a*) *Quære*, vide Cooper *v.* Strange, 680.

Marſhal, 1. Burrow 259. and Rex *v.* Pappineau.

Sect. 13. It hath been adjudged, that if a river be ſtopped, to the nuſance of the country, and none appear bound by preſcription to clear it, thoſe who have the piſcary, and the neighbouring towns who have a common paſſage and eaſement therein, may be compelled to do it.

37. Aſſ. 10. 2. R. Abr. 137.

As to THE THIRD POINT, *viz.* In what manner common nuſances may be puniſhed.

Sect. 14. It is ſaid (*b*), that a common ſcold is puniſhable by being put into the ducking-ſtool; and there is no doubt but that whoever is convicted of any other nuſance, may be fined and impriſoned.

(*b*) 6. Mod. 11. 178, 213. 2. R. Abr. 84. 2. Seſſ. Caſ. 39.

Sect. 15. And it is ſaid, that one convicted of a nuſance done to the king's highway, may be commanded by the judgment to remove the nuſance at his own coſts; and it ſeemeth to be reaſonable, that thoſe who are convicted of any other common nuſance ſhould alſo have the like judgment.

Vide Strange 686. Rex *v.* Pappineau, and the caſes there cited.

CHAPTER THE SEVENTY-SIXTH.

OF NUSANCES

RELATING TO

HIGHWAYS.

AND now I am particularly to conſider ſuch nuſances as relate to HIGHWAYS, and PUBLICK HOUSES.

And for the better underſtanding of thoſe which concern HIGHWAYS, I ſhall conſider,

1. Such as relate to highways in general.

2. Such as relate to bridges in particular.

For the better underſtanding of nuſances relating to highways in general, I ſhall examine the following particulars:

1. What ſhall be ſaid to be a highway.

2. At whoſe charge and by whom it ought to be repaired.

3. In what manner it is to be enlarged.

4. How the ſurveyors thereof ſhall be appointed.

5. How ſuch ſurveyors ought to execute their office.

6. What ſhall be ſaid to be a nuſance to the highway.

7. How ſuch nuſances are to be removed and puniſhed.

8. In what manner thoſe who are charged with any offence relating to the highway, are to be proceeded againſt.

9. How perſons ſo proceeded againſt may defend themſelves.

As to THE FIRST POINT, *viz.* What ſhall be ſaid to be a highway.

Co. Lit. 56. *Communis ſtrata* and *alia via regia* are ſynonimous terms. Str. 44. 10. Mod. 383. Andrews 143.

Sect. 1. It is ſaid that there are three kinds of ways; Firſt, a footway, which is called in Latin, *iter*. Secondly, a pack and prime-way, which is both a horſe and foot-way, and called in Latin, *actus*. Thirdly, a cart-way, which contains the other two; and alſo a cart-way, and is called in Latin, *via* or *aditus*; and this is either common to all men, and then it is called, *via regia*, or belongs to ſome city or town, or private perſon, and then it is called, *communis ſtrata*.

Palm. 389. 6. Mod. 255. B. R. H. 315.

It ſeemeth that any one of the ſaid ways, which is common to all the king's people, whether it lead directly to a market-town, or only from town to town, may properly be called a highway, and that any ſuch cart-way may be called the king's highway, and that a nuſance in any of the ſaid ways is puniſhable by indictment in the court-leet; for indictments for (*a*) ſtopping horſeways, and (*b*) footways, have often been allowed; and where others have been quaſhed, no other reaſon has been given for it, but that the way was not called a common way or highway.

(*a*) C. Eliz. 63.
(*b*) 1. Vent. 208. 2. Keble 178. 3. Keble 26. 6. Mod. 255.

(*c*) 27 Aſſ. 23. Fitz. 279. 2. Com. Dig. 397.

And in (*c*) books of the beſt authority, *a river* common to all men is called a highway.

(*d*) Co. Lit. 56. 5. Ed. 4. 2. (*e*) 3. & 4. W. & Mary 12. 4. Burr. 2091.

And it is laid (*d*) down as a general rule, that nuſances to any way common to all men, are inquirable in THE LEET, and horſe-cauſeys are taken notice of by (*e*) parliament; and therefore there ſeems to be no reaſon why any way leading from village to village, which does not terminate there, but is alſo a thoroughfare to other towns, may not properly be called a common or highway, or why a nuſance therein ſhould not be indictable, whether it directly lead to a market-town or not; for ſince ſuch a way lies open to all the king's ſubjects, a nuſance therein (*f*) cannot but be a common nuſance, and if it be not puniſhable by indictment it would not be puniſhable at all, inaſmuch as it (*g*) ſeems to be certain, that it is not puniſhable by action, becauſe if one man might bring his action in reſpect of the poſſibility of the damage which he might receive from it, all other men may do the like, which would introduce a multiplicity of actions; and therefore the diſtinction which is taken in ſome (*h*) books concerning this matter, ſeems to be very reaſonable, that every way from town to town may be called a highway, becauſe it is common to all the king's ſubjects, but that a way to a pariſh-church, or to the common fields of a town, or to a private houſe, or perhaps to a village, which terminates there, and is for the benefit of the particular

(*f*) Kitchen 35. Palmer 389. 2. Roll. 412.
(*g*) Moor 180. Cro. El. 664. Co. Lit. 56. 27. H. 8. 27.
(*h*) 1. Vent. 189. Kitchen 35. 1. Vent. 258. 2. Keble 28. Ld. Raym. 1164. Salkeld 359.

particular inhabitants of ſuch pariſh, houſe, or village only, may be called a private way, but not a highway, becauſe it belongeth not to all the king's ſubjects, but only to ſome particular perſons, each of which, as it ſeems, may have an action on the caſe for a nuſance therein. Co. Lit. 56.

† But it hath been determined, that a ſtreet built upon a perſon's own ground, is a dedication of the highway ſo far only as the publick has occaſion for it, *viz.* for a right of paſſage, and is not to be underſtood as a transfer of the abſolute poſſeſſion of the ſoil. Strange 1004.

Sect. 2. It hath been holden, that if there be a highway in an open field, and the people have uſed, time out of mind, when the ways are bad, to go by outlets on the land adjoining, ſuch outlets are parcel of the way; for the king's ſubjects ought to have a good paſſage, and the good paſſage is the way, and not only the beaten track; from whence it follows, that if ſuch outlets be ſown with corn, and the beaten track be founderous, the king's ſubjects may juſtify going upon the corn. 1. R. Abr. 390. Cro. Car. 366. Douglas 746. to 749.

† So if one grant a way, and afterwards dig trenches in it to the hindrance of the grantee, he may fill them up again. But if a way which a man has, becomes not paſſable, or very bad, by the owner of the land tearing it up with his carts, ſo that the ſame be filled with water, yet he who has the way cannot dig the ground to let out the water, for he has no intereſt in the ſoil. But in ſuch caſe he may bring his action againſt the owner of the land for ſpoiling the way, or perhaps he may go out of the way, upon the land of the wrongdoer, as near to the bad way as he can. Godb. 52.

† But where a private way is ſpoiled by thoſe who have a right to paſs thereon, and not through the default of the owner of the land, it ſeems that they who have the uſe and benefit of the way ought to repair it, and not the owner of the ſoil, unleſs he is bound thereto by cuſtom or ſpecial agreement. 2. Burr. 382.

† So if I have a private way without a gate, and a gate is hung up, an action lies upon the caſe, for I have not my way as I had before. Litt. 267.

Sect. 3. It ſeemeth to be agreed, that an ancient highway cannot be changed without the king's licence firſt obtained upon a writ of *ad quod damnum*, and an inquiſition thereon found, that ſuch a change will not be prejudicial to the C. Car. 266. 267. Vaugh. 341. 1. Burr. 465. Vide note (3) infra.

the publick; and it is ſaid, that if one change a highway without ſuch authority, he may ſtop the new way whenever he pleaſes.

C. Car. 267. Yelv. 141, 142. And it ſeemeth, that the king's ſubjects have not ſuch an intereſt in ſuch new way as will make good a general juſtification of their going in it as in a common highway; but that in an action of treſpaſs brought by the owner of the land againſt thoſe who ſhall go over it, they ought to ſhew ſpecially, by way of excuſe, how the old way was obſtructed, and the new one ſet out.

Alſo it is ſaid, that the inhabitants are not bound to keep watch in ſuch new way, or to make amends for a robbery therein committed, or to repair it.

1. Burr. 465. † An owner of land over which there is an open road may incloſe it by his own authority, but he is bound to leave ſufficient ſpace and room for the road, and he is obliged to repair it till he throws up the incloſure. But if he alter or change the road by the legal courſe of a writ of *ad quod damnum*, he is not obliged to repair the new road, unleſs the jury impoſe ſuch a condition upon him; for otherwiſe it ſtands juſt as it did before; even though it was at firſt open, and ſhould be directed by the jury to be incloſed.

1. Burr. 465. † And a private act of parliament for incloſing lands, which veſts a power in commiſſioners to ſet out new roads by their award, is equally ſtrong, as to theſe conſequences, as a writ of *ad quod damnum*.

C. Car. 267. 22. Aſſize 93. 1. R. Abr. 390. Vide Taylor v. Whitbread, Douglas 745. *Sect.* 4. However it is certain, that a highway may be changed by the act of GOD; and therefore it hath been holden, that if a water which has been an ancient highway, by degrees change its courſe, and go over different ground from that whereon it uſed to run, yet the highway continues in the new channel, in the ſame manner as in the old.

As to THE SECOND POINT, *viz.* At whoſe charge and by whom the highway ought to be repaired, I ſhall conſider,

1. What proviſion is made by the common law concerning this matter.

2. What by ſtatute.

As

As to the firſt of theſe particulars, *viz.* What proviſion has been made by the common law for the repairs of highways.

Sect. 5. It ſeems to be agreed, that of common right, the general charge of repairing all highways lies on the occupiers of the lands in the pariſh wherein they are (*a*): †And therefore, if the inhabitants of a townſhip, bound by preſcription to repair the roads within the townſhip, be expreſsly exempted, by the proviſions of a road act, from the charge of repairing new roads to be made within the townſhip, that charge muſt neceſſarily fall on the reſt of the pariſh.

(*a*) 1. R. Abr. 890.

2. Term Rep. 106.

But it is ſaid, that the tenants of the lands adjoining are bound to ſcour their ditches (*b*).

(*b*) March 26. 1. Vent. 90. 183. 189. Sum. 144.

And there is no doubt but particular perſons may be burthened with the general charge of repairing the highway in two caſes, *viz.* in reſpect of an incloſure of the land wherein it lies; and in reſpect of a preſcription.

8. H. 7. 5. Ld. Ray. 725. 2. Term. Rep. 232.

And FIRST, a particular perſon may be bound to repair a highway in reſpect of an incloſure.

Sect. 6. As where the owner of lands not incloſed, next adjoining to the highway, incloſes his lands on both ſides thereof, in which caſe he is bound to make a perfect good way, and ſhall not be excuſed for making it as good as it was at the time of the incloſure, if it were then any way defective; becauſe, before the incloſure, the people uſed, when the way was bad, to go for their better paſſage, over the fields adjoining, out of the common track, which liberty is taken away by the incloſure.

1. R. Abr. 390. C. Car. 366. 1. Siderfin 464. Sed vide 1. Burr. 461. to 466. *contra.* Ld. Ray. 1170.

Sect. 7. Alſo it hath been holden, that if one incloſe land on one ſide, which hath been anciently incloſed of the other ſide, he ought to repair all the way, but that if there be not ſuch an ancient incloſure of the other ſide, he ought to repair but half that way.

1. Siderfin 464.

And it is ſaid, that wherever one is bound to repair a highway in reſpect of an incloſure, and lays it open again as it was before, he ſhall be freed from the charge of repairing it.

† So in a writ of *ad quod damnum*, and inquiſition found thereupon, after the perſon hath once made the road, (and it is not neceſſary the whole new road ſhould go through

3. Atk. 772.

through his own ſoil) the pariſhioners ought to keep it in repair; becauſe being diſcharged from the repairing of the old road, no new burthen is laid upon them; their labour is only transferred from one place to another. But if the new road lies in another pariſh, the perſon who ſued out the writ, and his heirs, ought to keep it in repair; becauſe as the inhabitants of the other pariſh gained no benefit from the old road being taken away, it would be impoſing a new charge upon them, for which they enjoyed no compenſation.

Rex v. Flecknow, 1. Burr. 461.

† So alſo if a highway be incloſed by virtue of a ſpecial act of parliament for incloſing and dividing common fields, &c. it ſhall continue to be repaired by the pariſh or townſhip, as it was before, unleſs otherwiſe directed by the act; for if he who incloſed the ground adjoining to the highway were obliged to repair, it might happen that the expence of repairing would be more than the value of his allotment.

SECONDLY, A particular perſon may be bound to repair a highway in reſpect of a preſcription *(a)*.

(a) Where the original of a way is accounted for, the preſcription is deſtroyed. Strange 909. 2. Saund. 160. 27. Aſſize 8. 21. Ed. 4. 38. Brook, Preſcription 49. 78. Far. 54, 55. 21. Ed. 4. 31. Keilw. 52. a. Latch. 206. 3. Salk. 77. 381. 6. Mod. 150. 190. 255. Salk. 357. a.

Sect. 8. It is ſaid, that a corporation aggregate may be compelled to do it by force of a general preſcription, that it ought and hath uſed to do it, without ſhewing that it uſed to do ſo in reſpect of the tenure of certain lands, or for any other conſideration; becauſe ſuch a corporation, in judgment of law, never dies, and therefore, if it were ever bound to ſuch a duty, it muſt needs continue to be always ſo; neither is it any plea that ſuch corporation have always done it out of charity; for what it hath always done, it ſhall be preſumed to have been always bound to do.

But it is ſaid, that a perſon cannot be charged with ſuch a duty by a general preſcription from what his anceſtors have done, becauſe no one is bound to do what his anceſtors have done, unleſs it be for ſome ſpecial reaſon, as the having lands deſcended from ſuch anceſtors, which are holden by ſuch like ſervice, &c. Yet it ſeems, that an indictment charging a tenant in fee ſimple with having uſed of right to repair ſuch a way *ratione tenuræ terræ ſuæ*, is certain enough, without adding, that his anceſtors, or thoſe whoſe eſtate he hath, have always ſo done, for that is implied in ſaying, "that he has always uſed to do it *ratione* "*tenuræ ſuæ*."

Alſo an occupier, as ſuch, though at will only, is indictable for ſuffering a houſe ſtanding upon the highway to be

be ruinous, &c. and the words "*ratione tenuræ, &c.*" if added, are ſurplus.

Sect. 9. However, it ſeemeth certain, that whether a particular perſon be bound to repair a highway by inclo-ſure or preſcription, &c. yet the pariſh cannot take advantage of it upon the plea of "*not guilty*" to an indictment againſt them for not repairing it, but ought to ſet forth their diſcharge in a ſpecial plea (1).

1. Mod. 112. 3. Keble 301. 1. Ventris 256. 10. Mod. 150. 382. 12. Mod. 15. 198. 409. Ld. Ray. 725. Strange 179. 922, 1162.

(1) It muſt appear upon the face of the indictment by what right the charge is laid upon the particular diviſion of any pariſh which is in one county only, 5. Burr. 2702; as that they have repaired time out of mind, and. 276. B. R. H. 259.

As to the ſecond particular, *viz.* at whoſe charge, and by whom the highway ought to be repaired by force of THE STATUTE.

For the better underſtanding whereof I ſhall examine,

1. Who are by ſtatute compellable to work in the repairs thereof in their own perſons, or by others.

2. Who may be aſſeſſed to a rate made for the defraying of the extraordinary charges of ſuch repairs.

3. In what manner fines for non-repairs ſhall be levied and aſſeſſed.

4. In what manner the profits of lands ſettled in truſt for the repairs of the highways ſhall be employed.

† As to THE FIRST POINT, *viz.* Who are compellable to work by ſtatute in the repairs of highways.

Sect. 10. It is enacted by 13. Geo. 3. c. 78. ſ. 34. "That "the ſurveyor to be appointed, as hereafter mentioned, "together with the inhabitants and occupiers of lands, te-"nements, woods, tithes, and hereditaments, within each "pariſh, townſhip, or place, ſhall, at proper ſeaſons in "every year, uſe their endeavours for the repair of the high-"ways, and ſhall be chargeable thereunto, as followeth." Statute duty.

Sect. 11. By 13. Geo. 3. c. 78. ſ. 34. "Every perſon "keeping a waggon, cart, wain, plough, or tumbrel, and "three or more horſes or beaſts of draught uſed to draw the "ſame, ſhall be deemed to keep a team, draught, or plough, "and be liable to perform ſtatute duty with the ſame, in the "pariſh,

" parish, townſhip, or place where he reſides, and ſhall
" ſix days in every year, (if ſo many days ſhall be found
" neceſſary) to be computed from *Michaelmas* to *Michael-*
" *mas*, ſend on every day, and at every place, to be ap-
" pointed by the ſurveyor for the amending the highways
" in ſuch pariſh, townſhip, or place, one wain, cart, or
" carriage, furniſhed after the cuſtom of the country, with
" oxen, horſes, or other cattle, and all other neceſſaries
" fit to carry things for that purpoſe, and alſo two able
" men with ſuch wain, cart, or carriage; which duty ſo
" performed, ſhall excuſe every ſuch perſon from his duty
" in ſuch pariſh, townſhip, or place, in reſpect of all lands,
" tenements, woods, tithes, or hereditaments, not exceed-
" ing the annual value of fifty pounds, which he ſhall oc-
" cupy therein."

† *Sect.* 12. And by 13. Geo. 3. c. 78. ſ. 34. " Every per-
" ſon keeping ſuch team, draught, or plough, and occupy-
" ing in the ſame pariſh, townſhip, or place, lands, tenements,
" woods, tithes, or hereditaments, of the yearly value of fifty
" pounds, over and beyond the ſaid yearly value of fifty
" pounds, in reſpect whereof ſuch team-duty ſhall be per-
" formed; and every ſuch perſon occupying to the yearly
" value of fifty pounds in any other pariſh, townſhip, or
" place, beſides that wherein he reſides, and every other
" perſon not keeping a team, draught, or plough, but oc-
" cupying to the yearly value of fifty pounds, in any pariſh,
" townſhip, or place, ſhall, in like manner reſpectively,
" and for the ſame number of days, find and ſend one wain,
" cart, or carriage, furniſhed with not leſs than three
" horſes, or four oxen and one horſe, or two oxen and
" two horſes, and two able men, to each wain, cart, or
" carriage; and in like manner for every fifty pounds *per*
" *annum* reſpectively, which every ſuch perſon ſhall further
" occupy, in any ſuch pariſh, townſhip, or place reſpec-
" tively; ſuch wains, carts, or carriages, to be employed
" by the ſurveyor in repairing and amending the highways
" within the pariſh, townſhip, or place where ſuch lands,
" tenements, woods, tithes, or hereditaments, ſhall reſpec-
" tively lie."

Contribution money.

† *Sect.* 13. And by 13. Geo. 3. c. 78. ſ. 34. " Every per-
" ſon who ſhall not keep a team, draught, or plough, but
" ſhall occupy under the yearly value of fifty pounds, in the
" pariſh, townſhip, or place where he reſides, or in any pa-
" riſh, townſhip, or place; and every perſon keeping a team,
" draught, or plough, and occupying under the yearly va-
" lue of fifty pounds, in any other pariſh, townſhip, or
" place, than that wherein he reſides, ſhall reſpectively
" con-

" contribute to the repair of the highways, and pay to the " ſurveyor of ſuch pariſh, townſhip, or place reſpectively, " in lieu of ſuch duty, the ſums following, *viz.* For every " twenty ſhillings of the annual value of ſuch lands, tene- " ments, woods, tithes, or hereditaments reſpectively, the " ſum of one penny for every day's ſtatute-duty which " ſhall be required and called for by the ſurveyor of ſuch " pariſh, townſhip, or place reſpectively, in every year not " exceeding ſix days duty in the whole, as aforeſaid; and " every ſuch perſon reſpectively ſhall, in like manner, pay " the ſum of one penny for every twenty ſhillings of the " annual value which he ſhall occupy in any ſuch pa- " riſh, townſhip, or place reſpectively, above the annual " value of fifty pounds, and leſs than one hundred pounds; " and ſo for every twenty ſhillings that each progreſſive " and intermediate annual value of twenty ſhillings, which " he ſhall ſo occupy, ſhall fall ſhort of the further increaſe " of fifty pounds, in every pariſh, townſhip, or place, where " ſuch lands, tenements, woods, tithes, and hereditaments " ſhall reſpectively lie, for every day's ſtatute-duty ſo to " be required as aforeſaid."

How the contributions are to be received.

† *Sect.* 14. By 13. Geo. 3. c. 78. ſ. 34. " The ſaid ſeveral " ſums ſhall be conſidered as compoſitions, and ſhall be paid " to the ſurveyor of the pariſh, townſhip, or place, in which " they are charged, for the uſe of the highways therein, at the " time ſuch compoſitions are to be paid under the authority " of this act, or within ten days after; or in default of ſuch " payments, ſuch money ſhall be levied by diſtreſs and " ſale of the goods and chattels of the perſon or perſons re- " fuſing to pay the ſame, in ſuch manner as the forfeitures " for the neglect in performing the ſtatute-duty are hereby " authoriſed to be levied and raiſed."

† *Sect.* 15. But by 13. Geo. 3. c. 78. ſ. 34. it is provided, " That no perſon keeping ſuch team, draught, or plough, " and performing the duty with the ſame as aforeſaid in the " pariſh, townſhip, or place where he reſides, and not oc- " cupying within the ſame to the yearly value of thirty " pounds, ſhall be obliged to ſend more than one labourer, " with ſuch team, draught, or plough."

The duty required from perſons who do not keep a team, but keep one or two horſes uſed to draw, or who keep a coach, poſt chaiſe, &c.

† *Sect.* 16. By 13. Geo. 3. c. 78. ſ. 35. it is further enacted, " That every perſon who ſhall not keep a team, " draught, or plough, but ſhall keep one or more cart, or " carts, and one or two horſes or beaſts of draught only, " uſed to draw in each of ſuch carts upon the highways, " ſhall be obliged to perform his ſtatute-duty for the like " number of days with ſuch cart or carts, and horſe or " horſes,

" horſes, or beaſts of draught, and one labourer to attend " each cart, or to pay for the lands, tenements, woods, " and hereditaments, which he ſhall occupy, according " to the rate aforeſaid, at the option of the ſurveyor."

† *Sect.* 17. And by 13. Geo. 3. c. 78. ſ. 35. " Every perſon who ſhall keep a coach, poſt-chaiſe, chair, or other " wheel-carriage, and not keep a team, draught, or plough, " nor occupy lands, tenements, woods, tithes, or hereditaments, of the annual value of fifty pounds, in the pariſh, " townſhip, or place where he ſhall reſide, ſhall pay to the " ſurveyor one ſhilling in reſpect of every ſuch day's ſtatute-" duty, for every horſe which he ſhall draw in any ſuch " carriage, or ſhall pay according to the value which he ſhall " occupy, according to the rate aforeſaid, at the option of " the ſurveyor."

Labour from occupiers of leſs than 4l. *per annum.*

† *Sect.* 18. And by 13. Geo. 3. c. 78. ſ. 35. " Every " man inhabiting in any pariſh, townſhip, or place, and being " of the age of eighteen, and under the age of ſixty years, " not chargeable in any of the reſpects aforeſaid for lands, " tenements, woods, tithes, or hereditaments, of the yearly " value of four pounds, or upwards, and not being *bona* " *fide* an apprentice or menial ſervant, nor having per-" formed the ſaid duty, or paid the compoſition for the " ſame, in any other pariſh, townſhip, or place, for that " year, ſhall, by themſelves, or one ſufficient labourer for " every of them, upon every of the ſaid days on which " they ſhall be called forth by the ſaid ſurveyor, together " with the ſaid other labourers, work and labour in the " amendment of the ſaid highways, as they ſhall be directed " by ſuch ſurveyor."

Three men to be ſent, or 4s. 6d. to be paid.

† *Sect.* 19. And by 13. Geo. 3. c. 78. ſ. 35. " If the ſaid " teams, draughts, or ploughs, or any of them, ſhall not be " thought needful by the ſurveyor on any of the ſaid days, " then every ſuch perſon who ſhould have ſent any ſuch " team, draught, or plough, according to the directions " aforeſaid, ſhall, according to the notice to be given as " herein-after directed, ſend unto the ſaid work, for every " one ſo ſpared, three able men, there to labour as afore-" ſaid, or to pay to the ſaid ſurveyor four ſhillings and ſix-" pence in lieu thereof."

† *Sect.* 20. And by 13. Geo. 3. c. 78. ſ. 35. " All ſuch " perſons as aforeſaid ſhall reſpectively have and bring with " them ſuch ſhovels, ſpades, picks, mattocks, and other " tools and inſtruments as are uſeful and proper for the " purpoſes aforeſaid."

And

† *Sect.* 21. By 13. Geo. 3. c. 78. ſ. 35. "All the ſaid perſons and carriages ſhall diligently perform the work and labour to which they ſhall be appointed by ſuch ſurveyor for eight hours in every of the ſaid days, within ſuch pariſh, townſhip, or place, or in getting and carrying materials in and from any other pariſh, townſhip, or place, to be employed in the repair of the highways of the pariſh, townſhip, or place, for which they ſhall be required to perform ſuch duty and labour as aforeſaid. The duty work ſhall be done *eight hours* a-day.

† *Sect.* 22. And by 13. Geo. 3. c. 78. ſ. 35. "If any perſon ſending a team, as aforeſaid, ſhall not ſend a ſufficient labourer beſides the driver (except as herein before mentioned), or if any ſuch labourer, or driver, or any other labourer, or the driver of any cart, required by this act to perform ſtatute-duty, as aforeſaid, ſhall refuſe to work and labour, during the time above mentioned, according to the direction of the ſurveyor; or if any driver ſhall refuſe to carry proper and ſufficient loads; it ſhall and may be lawful for ſuch ſurveyor to diſcharge every ſuch team, cart, or labourer, and to recover from the owner of every ſuch team or cart the forfeiture which every ſuch perſon or perſons would have incurred by virtue of this act, in caſe no ſuch team, cart, or labourer reſpectively had been ſent." If labourers refuſe to work, the ſurveyor may diſcharge the team and recover the penalty againſt the owner.

† *Sect.* 23. By 13. Geo. 3. c. 78. ſ. 36. it is alſo further enacted, "That the ſurveyor, where the employment for teams is of ſuch ſort that two horſes will be ſufficient for one cart, or where a ſtand-cart with one horſe ſhall be neceſſary, ſhall call upon any perſon liable to ſend a team, draught, or plough, by virtue of this act, who keeps one or more cart or carts, and three or more horſes, to ſend ſuch cart or carts, horſe or horſes, to perform his ſtatute duty, as the ſurveyor ſhall find moſt convenient, and ſhall direct; and the ſurveyor ſhall allow every ſuch ſtand-cart and one horſe as half a team, and every cart and two horſes as two-thirds of a team; and if a waggon ſhall be found neceſſary for any particular buſineſs, the ſurveyor may require the duty, or any part thereof, to be performed with ſuch waggon, by any perſon who keeps one; which directions of the ſurveyor ſhall be obſerved, or the perſon liable to perform ſuch duty ſhall forfeit ſuch ſum as the duty ſo required of him ſhall bear, in proportion to the forfeiture hereby inflicted for every neglect in performing duty with a team, draught, or plough. Part of a team may be called for.

The ſurveyor ſhall give *four days* notice.

† *Sect.* 24. By 13. Geo. 3. c. 78. ſ. 37. "Every ſuch ſurveyor ſhall, from time to time, give to, or cauſe to be left "at the houſe or uſual place of abode of every perſon or "perſons ſo liable to perform ſuch duty or labour, as in "this act directed, four days notice at the leaſt of the day, "hour, and place, upon which each of the ſaid days duty "ſhall be required to be performed.

The forfeitures inflicted for non-performance of the ſtatute duty.

† *Sect.* 25. By 13. Geo. 3. c. 78. ſ. 37. "Every perſon "or perſons making default in finding and ſending each "wain, cart, or carriage, furniſhed as aforeſaid, and ſuch able "men with the ſame, as herein required, or in performing "the ſaid duty at the time and place, and in the manner, "by this act directed, ſhall, for every ſuch default or neg-"lect in ſending ſuch wain, cart, or carriage, with ſuch "men as aforeſaid, forfeit the ſum of ten ſhillings; and "for every default in ſending every cart with one horſe "and one man, three ſhillings; and for not ſending every "cart with two horſes and one man, five ſhillings: and "every perſon or perſons making default in ſending any ſuch "labourer, and every perſon making default in performing "ſuch labour, at the time and place, and in the manner di-"rected by this act, or in paying ſuch compoſition-money "for the ſame as herein mentioned, ſhall, for every ſuch neg-"lect, forfeit the ſum of one ſhilling and ſixpence; all which "forfeitures ſhall be applied for the uſe of the highways within "the pariſh, townſhip, or place, where the ſame ſhall ariſe.

The ſurveyor to be impartial.

† *Sect.* 26. By 13. Geo. 3. c. 78. ſ. 37. "The ſaid ſur-"veyor ſhall fairly and equally demand and require ſuch duty "and labour from every perſon or perſons liable to perform "the ſame, according to the directions of this act, without "favour or partiality to any perſon or perſons whomſoever; "and if in any pariſh, townſhip, or place, it ſhall not be "neceſſary to call forth the whole duty in any year, it "ſhall be abated in a juſt and equal proportion amongſt "all perſons liable to the ſame.

The ſurveyor ſhall recover the penalties before he makes up his accounts.

† *Sect.* 27. By 13. Geo. 3. c. 78. ſ. 37. "The ſaid ſur-"veyor may and ſhall, and he is hereby required, with all "convenient ſpeed, after default made in performance of ſuch "duty or labour as aforeſaid, to proceed for the recovery of "the penalties or forfeitures hereby inflicted for the ſame "reſpectively, in manner herein-after directed, ſo that the "ſame may be recovered before he makes up his accounts "in the manner directed by this act."

Perſons liable to perform ſtatute duty may compound for it with the ſurveyor as the juſtices ſhall direct.

† *Sect.* 28. But by 13. Geo. 3. c. 78. ſ. 38. it is enacted, "That any perſon or perſons liable to perform the ſaid

duty,

" duty, by ſending one or more team or teams, draught or " draughts, plough or ploughs, with men, horſes, or " oxen, in manner aforeſaid, ſhall and may compound " for the ſame, if he, ſhe, or they, ſhall think fit, by " paying to the ſaid ſurveyor, at the time, and in the man- " ner herein-after mentioned, ſuch ſum or ſums of money " as the juſtices of the peace for the limit wherein ſuch " pariſh, townſhip, or place ſhall be, or the major part of " them, at their ſaid ſpecial ſeſſions, to be held in the " firſt week after *Michaelmas* quarter ſeſſions in every year, " ſhall adjudge and declare to be reaſonable, not exceeding " ſix ſhillings, nor leſs than three ſhillings, for each team, " draught, or plough, for each day; and in default of " their adjudging and declaring the ſame, the ſum of four " ſhillings and ſix-pence for and in lieu of every ſuch day's " duty for each team, draught, or plough; and for every " cart and one horſe or beaſt of draught, two ſhillings; " and for every cart with two horſes or beaſts of draught, " three ſhillings, for and in lieu of every day's duty; and " every inhabitant liable to perform ſuch duty or labour " as aforeſaid, and not chargeable in any other reſpect as " aforeſaid, ſhall and may compound for the ſame, if he, " ſhe, or they, ſhall think fit, by paying to the ſurveyor " the ſum of four-pence, for and in lieu of every ſuch day's " duty or labour reſpectively, at the time, and in the man- " ner, herein-after directed for the payment of compo- " ſition-money."

† *Sect.* 29. By 13. Geo. 3. c. 78. ſ. 39. it is provided, " That if it ſhall appear to the juſtices, at their ſpecial ſeſ- " ſions, to be held in the week next after *Michaelmas* quar- " ter ſeſſions, that, from the directions herein-before given " for the performing and compounding the ſtatute-duty, " there will be difficulty in procuring the neceſſary car- " riages, or a ſufficient number of labourers, for the repair " of the highways, in any particular pariſh, townſhip, or " place, within their reſpective limits, without paying high " and extravagant prices for the ſame; it ſhall and may be " lawful for ſuch juſtices to order and direct the team-duty " hereby required, or ſo much thereof as they ſhall think " fit, to be performed in kind, within every ſuch pariſh, " townſhip or place, except in reſpect of ſuch teams as " belong to perſons who do not occupy lands, tenements, " woods, tithes, or hereditaments, of the annual value of " thirty pounds within the ſame; and alſo to order the la- " bourers, liable by this act to perform or compound for " ſtatute-duty, or ſuch part of them as they ſhall think fit, " to perform ſix days labour upon ſuch highways in kind, " in caſe ſo many days duty ſhall be required, upon being

But if labourers cannot be procured except at extravagant prices, the juſtices may order the perſons liable to perform the duty at the ordinary wages, and deduct the compoſition-money.

" paid for ſuch labour the uſual and cuſtomary wages given " to labourers in ſuch pariſh, townſhip, or place, deduct- " ing thereout the ſum of four-pence for each day's duty " ſo performed, being the compoſition hereby allowed for " labourers: provided, that if part of ſuch teams or la- " bourers only are required, it ſhall be directed by the ſaid " order of the juſtices in ſome given proportion, as one " half, third, or fourth part thereof."

The perſons liable to be called on, in ſuch caſe, ſhall be choſen at a veſtry by ballot.

† *Sect.* 30. By 13. Geo. 3. c. 78. ſ. 39. " The ſurveyor " ſhall, in that caſe, at a public veſtry for ſuch pariſh, town- " ſhip, or place, put the names of all the perſons liable by " this act to ſend ſuch teams into one hat or box, and the " names of all the perſons liable to perform ſuch labour " into another hat or box, and ſome inhabitant then pre- " ſent ſhall draw out ſuch number from each as ſhall be " equal to the proportion ſo ordered by the ſaid juſtices, " and the perſons ſo drawn ſhall perform ſuch duty in " kind for that year; and if any ſuch order ſhall be made " or continued in the ſubſequent year, the ſame me- " thod ſhall be obſerved, but the names drawn in the pre- " ceding year ſhall not be put into ſuch hat or box; and " in every ſucceeding year ſuch method and regulation " ſhall be obſerved by ſuch ſurveyor, as to render the duty " ſo required to be performed in kind as equal amongſt the " ſeveral perſons liable thereto as may be."

The order thereon ſhall ſuperſede the liberty of compounding.

† *Sect.* 31. By 13. Geo. 3. c. 78. ſ. 39. " Such order of " the ſaid juſtices, ſo far as the ſame ſhall be extended, ſhall " ſuperſede the ſaid power or liberty of compounding, and " ſhall be binding and effectual to all intents and purpoſes " whatſoever, and ſhall continue in force until it ſhall be " diſcharged or varied by the juſtices at ſome ſubſequent " ſpecial ſeſſions for the highways within ſuch limit, to " be held in the week next after *Michaelmas* quarter ſeſ- " ſions."

Power of mitigation.

† *Sect.* 32. By 13. Geo. 3. c. 78. ſ. 40. it is alſo further enacted, " That where any perſon ſhall keep a team, draught, " or plough, and ſhall not occupy lands, tenements, woods, " tithes, or hereditaments, to the value of thirty pounds " *per annum*, in the pariſh, townſhip, or place, where he " ſhall reſide, but ſhall in part maintain his horſes and " beaſts of draught uſed in ſuch team upon or from lands " which he ſhall occupy in one or more adjacent pariſh " or pariſhes, it ſhall and may be lawful for the ſaid juſtices, " at ſome ſpecial ſeſſions, to mitigate and reduce the duty " or compoſition ſo required to be performed or paid by " ſuch

" ſuch perſon or perſons, in ſuch manner, and to ſuch " ſum, as they ſhall think juſt and reaſonable."

† *Sect.* 33. But by 13. Geo. 3. c. 78. ſ. 41. it is provided, " That the ſaid ſurveyor of every pariſh, townſhip, or place, " ſhall, on ſome *Sunday* in *November* in every year, cauſe " ten days notice at the leaſt to be given in the church or " chapel of ſuch pariſh, townſhip, or place, and if there " be no church or chapel, or no ſervice performed therein, " then at the moſt public place there, and repeat the like " notice in ſuch church, chapel, or place, on the next ſuc- " ceeding *Sunday*, of the time and place when and where " the perſons permitted under the authority of this act, and " inclined to compound for the ſaid duty, in manner afore- " ſaid, may ſignify to ſuch ſurveyor their intention to " compound; and all perſons ſignifying the ſame, who " ſhall then, or within the ſpace of one calendar month " afterwards, pay to ſuch ſurveyor the compoſition autho- " riſed and allowed by this act, ſhall be diſcharged from " the performance of ſuch duty, which compoſition-money " ſhall be employed by the ſurveyor for the uſe of the " ways; and that no compoſition ſhall be permitted, un- " leſs the ſame ſhall be paid at the day, or within the time " aforeſaid."

Surveyors to give notice of the time and place for compounding.

† *Sect.* 34. By 13. Geo. 3. c. 78. ſ. 41. " In caſes where " the occupation of any lands, tenements, woods, tithes, or " hereditaments, ſhall be changed, or any new occupant or " inhabitant ſhall come to reſide in ſuch pariſh, townſhip, " or place, after the time appointed for ſuch compoſition, " then the perſon or perſons occupying ſuch lands, tene- " ments, woods, tithes, or hereditaments, or ſo reſiding in " ſuch pariſh, townſhip, or place, ſhall be allowed to com- " pound in manner aforeſaid: provided he, ſhe, or they, " ſhall pay the ſaid compoſition-money to the ſaid ſurveyor " within fourteen days after he, ſhe, or they, ſhall enter " upon ſuch lands, tenements, or hereditaments, or ſhall " come to reſide in ſuch pariſh, townſhip, or place; and " every tenant or occupier of any lands, tenements, woods, " tithes, or hereditaments, who intends to quit the poſ- " ſeſſion thereof, within ſix calendar months from the time " fixed for making ſuch compoſition, ſhall and may com- " pound for half the duty hereby required, and the ſuc- " ceeding tenant or occupier ſhall and may, in that caſe, " compound or perform the duty in kind for the other half " thereof."

Perſons who enter into the occupation of lands ſubſequent to the time of compounding, may afterwards compound.

† *Sect.* 35. By 13. Geo. 3. c. 78. ſ. 41. " If the ſurveyor " ſhall receive from any perſon or perſons a compoſition for " more

The *compoſition* and *the duty* ſhall be equally apportioned.

" more duty than ſhall be required from the other inhabi-
" tants and occupiers within the ſame pariſh, townſhip, or
" place, for the ſame year, he ſhall repay ſuch extraordi-
" nary compoſition-money to ſuch perſon or perſons, ſo
" as to bring the duty to an equality amongſt all ſuch in-
" habitants and occupiers."

Duty where no carriage is kept.

† *Sect.* 36. By 13. Geo. 3. c. 78. ſ. 42. " Where any
" perſon ſhall keep a draught or plough, and no carriage,
" he ſhall pay to the ſurveyor the ſum of one ſhilling for
" every horſe or pair of oxen or neat cattle, uſed in ſuch
" draught or plough, for every day's ſtatute-duty on the
" day ſuch duty is required to be performed, or pay accord-
" ing to the rate aforeſaid for the lands, tenements, woods,
" tithes, and hereditaments, which he ſhall occupy in
" ſuch pariſh, townſhip, or place, at the option of the
" ſurveyor."

Of the ſeed month.

† *Sect.* 37. By 13. Geo. 3. c. 78. ſ. 42. " The inhabi-
" tants of every pariſh, townſhip, or place, at ſome veſtry,
" or other public meeting, held purſuant to this act, may
" appoint three months in every year, within which no
" ſtatute-duty ſhall be performed: one month in the
" ſpring, to be called the *ſeed month*; one month in the
" ſummer, for the hay harveſt; and one other month in
" the ſummer, for the corn harveſt."

† *Sect.* 38. But by 13. Geo. 3. c. 78. ſ. 42. it is provided,
" That notice in writing be given of the times ſo appointed
" to the ſurveyor of ſuch pariſh, townſhip, or place reſpec-
" tively, and alſo to the ſurveyor of every turnpike road
" lying within the ſame, within three days after every ſuch
" meeting, and fourteen days at leaſt before the beginning
" of each of ſuch months."

Perſons exempted.

† *Sect.* 39. By 26. Geo. 3. c. 107. ſ. 130. " No ſerjeant,
" corporal, or drummer of the militia, nor any private man,
" from the time of his enrollment until his diſcharge,
" ſhall be obliged to perform any highway duty commonly
" called ſtatute-work."

† N. B. In the expoſition of the former ſtatutes upon this ſubject, *viz.* the 2. and 3. Philip and Mary, c. 8. ſ. 2.; the 22. Car. 2. c. 12. ſ. 8. and 9.; the 18. Eliz. c. 10. ſ. 2. and 3.; and the 7. and 8. Will. 3 c. 29.; the language of which is, with little variation, purſued by the above ſtatute, 13 Geo. 3. c. 78. the following opinions have been holden.

Sect.

Sect. 40. FIRST, that (*a*) perſons in holy orders are within the purview of them, in reſpect of their ſpiritual poſſeſſions, as much as any other perſons whatſoever, in reſpect of any other poſſeſſions, for the words are general, and there is no kind of intimation that any particular perſons ſhall be exempted more than others.

(*a*) 3. Keb 255. 476. 1. Ventris 273. Watſon 40. 2. Inſt. 704.

Sect. 41. SECONDLY, (*b*) that he who keeps ſeveral draughts in a pariſh is bound to ſend a team for each draught, whether he occupy any land in the pariſh or not; and in like manner, that he who occupies ſeveral plough-lands, ought to ſend a team for each plough-land, whether he keeps any draught or not.

(*b*) Raym. 186. 3 Keble 567. 468. 568. Vide Dalt. c. 26. 2. Keble 617.

Sect. 42. THIRDLY, that (*c*) notwithſtanding the words of the ſtatute extend only to the occupiers of lands, yet if the owner neither occupy them, nor let them, but ſuffer them to lie freſh, he ſhall be charged as much as if he had occupied them, for there is no reaſon that the publick ſhall ſuffer for his negligence.

(*c*) Palm. 389. 2. Roll. 412.

Sect. 43. FOURTHLY, that it is no excuſe for the inhabitants of a pariſh, being indicted at common law for not repairing the highways, that they have done the full work required of them by ſtatute; for ſince theſe ſtatutes are wholly in the affirmative, and made in aid of the common law, and to ſupply the defects thereof, they ſhall not be conſtrued to abrogate any proviſion thereby made for theſe purpoſes.

Dalt. c. 26.

† *Sect.* 44. FIFTHLY, that the appointment by the ſurveyor to do the ſix days ſtatute-work, muſt expreſs the particular days on which the work is required to be done, and not ſay between ſuch a day and ſuch a day only.

Reg. v. Kime, 2 Ld. Ray. 858. 1. Salk. 357.

† *Sect.* 45. SIXTHLY, that the inhabitants of a pariſh into which a road is turned by turnpike truſtees, are not bound to do ſtatute-work thereon. But by 13. Geo. 3. c. 84. ſ. 60. the ſurveyors of turnpike roads may, when neceſſary, enforce the powers given by the highway act.

Wheeler v. Cooper, 1. B. Rep. 603.

N. B. DALTON is of opinion, that he who keeps a draught and but two horſes, ought to attend therewith at the times appointed, and that if he carry with them ſuch loads as they are able to draw, he ſhall be excuſed.

Chapter 26.

† *Sect.* 46. And whereas there may be *turnpike roads* in ſuch a ſtate and condition of repair, that the ſtatute-duty applied to the ſtatute repair of the

How the funds of turnpike roads may be applied to the highways.

required to be performed upon them may be diſpenſed with, &c. &c. it is therefore enacted by 13. Geo. 3. c. 84. ſ. 58. "That the juſtices at any ſpecial ſeſſions, upon application "to them made by the ſurveyor of any place in which ſuch "turnpike road lies, may ſummon the clerk and ſurveyor "of ſuch turnpike road to appear before them at ſome "other ſpecial ſeſſions, and then and there to produce be-"fore them a ſtate of the revenues and debts belonging to "ſuch turnpike road, and ſuch juſtices may then and there "enquire into the ſtate and condition of the repairs thereof, "and alſo of ſuch other highways; and if it ſhall appear "to them, upon full and clear evidence, that the whole or "any part of ſuch ſtatute-duty may be conveniently diſ-"penſed with from ſuch turnpike roads, without endan-"gering the ſecurities for the money advanced upon the "credit of the tolls thereof, and that ſuch ſtatute-duty is "wanted for the repairs of the other highways within ſuch "pariſh, townſhip, or place, the ſaid juſtices may order "the whole or part of ſuch ſtatute-duty to be performed "upon the highways, not being turnpike, within ſuch "pariſh, townſhip, or place, under the direction of the "ſurveyor thereof, during ſuch time as to them ſhall ſeem "juſt and reaſonable."

As to THE SECOND POINT, *viz.* Who may be aſſeſſed to a rate made for the defraying of the extraordinary charges of ſuch repairs.

The juſtices at ſeſſions, on application of the ſurveyor, may direct a rate for the purpoſe of purchaſing materials, if none are to be procured within the pariſh.

† *Sect.* 47. It is recited by the abovementioned ſtatute of 13. Geo. 3. c. 78. ſ. 30. "That in ſome pariſhes, town-ſhips, or places, there may not be ſufficient materials for the repair of the highways within the ſame, nor within the waſte lands, common grounds, rivers or brooks, of any other pariſh, townſhip, or place, lying within a convenient diſtance from ſuch highway, by reaſon whereof the ſur-veyor of ſuch highway may be forced to buy ſuch materials, and to make recompence and ſatisfaction to the owner or occupier of incloſed lands, for damage which may be done by getting and carrying thereof: and whereas no provi-ſion is made for raiſing a fund to reimburſe the expences thereof, and alſo ſuch expences as the ſaid ſurveyors may incur, by erecting guide-poſts, or other poſts or ſtones, and by making or repairing ſuch trunks, tunnels, plats, bridges, or arches, as aforeſaid, and by rendering ſatisfaction for damages done to lands by the making of new ditches or drains, nor for the ſalary to be paid by ſuch pariſh, town-ſhip, or place, to ſuch ſurveyor as aforeſaid;" it is therefore enacted, "That upon application by ſuch ſur-"veyor to the juſtices of the peace, at their ſpecial ſeſ-"ſions,

" ſions, and oath made of the ſum or ſums of money " which he hath *bona fide* laid out and expended, or which " will be required for the purpoſes aforeſaid, the ſaid juſ- " tices, or any two or more of them, ſhall, and they are " hereby impowered, by warrant under their hands and " ſeals, to cauſe an equal aſſeſſment to be made, for the pur- " poſes aforeſaid, upon all occupiers of lands (2), tenements, " woods, tithes, and hereditaments, within ſuch pariſh, " townſhip, or place, where ſuch money ſhall be ſo ex- " pended or laid out; and the ſame ſhall be made and " collected by ſuch perſon or perſons, and allowed in " ſuch manner, as the ſaid juſtices, by their order at ſuch " ſeſſions, ſhall direct and appoint in that behalf; and the " money thereby raiſed ſhall be employed and accounted " for according to the direction of the ſaid juſtices, for " the purpoſes aforeſaid; and the ſaid aſſeſſment ſhall be " levied in ſuch manner as herein-after mentioned."

(2) An order for impoſing a rate was quaſhed, becauſe it did not appear but that the ſtatute duty was ſufficient, and becauſe only the occupiers of land were charged, whereasothers are equally liable. Str. 315. Sed vide Forteſ. 327.

† *Sect.* 48. But by 13. Geo. 3. c. 78. ſ. 30. it is provided, " That no ſuch aſſeſſment to be made for thoſe or any of " thoſe purpoſes, in any one year, ſhall exceed the rate of " ſixpence in the pound, of the yearly value of the lands, " tenements, woods, tithes, and hereditaments, ſo to be " aſſeſſed."

In what manner an aſſeſſment may be made.

† *Sect.* 49. By 13. Geo. 3. c. 78. ſ. 45. it is further enacted, " That if upon application of the ſurveyor of the " highways for any pariſh, townſhip, or place, to the juſ- " tices of the peace for the limit wherein ſuch pariſh, " townſhip, or place lieth, at their general or quarter ſeſ- " ſions of the peace, or at ſome ſpecial ſeſſions for the " highways, the ſaid juſtices ſhall be fully ſatisfied, by " proof upon oath, that the duty directed to be performed, " and the money authoriſed to be collected and received, " has been performed, applied, and expended, according " to the directions of this act, or ſhall be fully ſatisfied " that the common highways, bridges, cauſeways, ſtreets, " or pavements, belonging to ſuch pariſh, townſhip, or " place, are ſo far out of order, that they cannot be ſuf- " ficiently amended and repaired, paved, cleanſed, and " ſupported, by the means herein-before preſcribed (no- " tice being firſt given of ſuch intended application at the " church or chapel of ſuch pariſh, townſhip, or place, on " ſome *Sunday* preceding ſuch quarter or ſpecial ſeſſions; " or if the place be extraparochial, notice in writing being " firſt given of ſuch intended application to ſome of the " principal inhabitants reſiding in ſuch extraparochial place, " a week at leaſt before ſuch general or ſpecial ſeſſions); " and then, and in any of the ſaid caſes, an equal aſſeſſ-

Vide the caſe of the King *v.* Inh. of Newton in Cheſhire.

" ment,

" ment upon all and every the occupier of lands, tene-
" ments, woods, tithes, and hereditaments, within any
" ſuch pariſh, townſhip, or place, ſhall or may be made
" and collected by ſuch perſon or perſons, and allowed in
" ſuch manner, as the ſaid juſtices, by their order, at ſuch
" general or ſpecial ſeſſions, ſhall direct and appoint in that
" behalf; and the money thereby raiſed ſhall be employed
" and accounted for, according to the orders and directions
" of the ſaid juſtices, for and towards the amending, re-
" pairing, paving, cleanſing, and ſupporting ſuch high-
" ways, cauſeways, ſtreets, pavements, and bridges, from
" time to time, as need ſhall require."

Not to exceed 9d. in the pound.

Vide poſt.

† *Sect.* 50. And by 13. Geo. 3. c. 78. ſ. 46. " The aſ-
" ſeſſment herein-laſt before authoriſed, and the aſſeſſment
" herein-before authoriſed, for buying materials, making
" ſatisfaction for damages, erecting guide-poſts, and pay-
" ing the ſurveyor's ſalary, ſhall not together, in any one
" year, exceed the rate of nine-pence in the pound of the
" yearly value of the lands, tenements, woods, tithes, and
" hereditaments, ſo to be aſſeſſed."

As to THE THIRD POINT, *viz.* In what manner fines for non-repair ſhall be levied and aſſeſſed.

Fines, &c. how levied and applied.

† *Sect.* 51. It is enacted by the ſaid ſtatute of 13. Geo. 3. c. 78. ſ. 47. " That no fine, iſſue, penalty, or forfeiture,
" for not repairing the highways, or not appearing to any
" indictment or preſentment for not repairing the ſame,
" ſhall hereafter be returned into THE COURT OF EXCHE-
" QUER, or other court, but ſhall be levied by and paid
" into the hands of ſuch perſon or perſons reſiding in or
" near the pariſh, townſhip, or place, where the road ſhall
" lie, as the court impoſing ſuch fines, iſſues, penalties, or
" forfeitures, ſhall order and direct, to be applied towards
" the repair and amendment of ſuch highways; and the
" perſon or perſons ſo ordered to receive ſuch fine ſhall,
" and is hereby required to receive, apply, and account
" for the ſame, according to the direction of ſuch court,
" or, in default thereof, ſhall forfeit double the ſum re-
" ceived.

The juſtices, on application of any individual on whom a fine impoſed on a pariſh has been levied, may make a rate to reimburſe him.

† *Sect.* 52. By 13. Geo. 3. c. 78. ſ. 47. " If any fine, iſſue,
" penalty, or forfeiture, to be impoſed on any ſuch pariſh,
" townſhip, or place, for not repairing the highways, or
" not appearing as aforeſaid, ſhall hereafter be levied on
" any one or more of the inhabitants of ſuch pariſh, town-
" ſhip, or place, that then ſuch inhabitant or inhabitants
" ſhall and may make his or their complaint to the juſtices
" of

" of the peace, at their ſpecial ſeſſions; and the ſaid juſ-
" tices are hereby impowered and authoriſed, by warrant
" under their hands and ſeals, to cauſe a rate to be made,
" according to the form and manner herein-laſt before
" preſcribed, for the reimburſing ſuch inhabitant or inha-
" bitants the monies ſo levied on him or them as aforeſaid;
" which rate ſo made, and confirmed by any two juſtices,
" ſhall be collected and levied by the ſurveyor of the high-
" ways of ſuch pariſh, townſhip, or place, ſo preſented or
" indicted, as aforeſaid; and the ſaid ſurveyor ſhall, with-
" in one month next after the making and confirming the
" rate aforeſaid, collect, levy, and pay unto ſuch inhabi-
" tant or inhabitants the money ſo levied on him or them
" as aforeſaid."

† *Sect.* 53. It hath been decided, that if a pariſh conſiſting of two diſtricts, which are bound to repair ſeparately, be convicted for not repairing the road in one of the diſtricts, the other diſtrict having no notice of the indictment, the Court will conſider it as being ſubſtantially the conviction of the one diſtrict, and if the fine be levied on an inhabitant of the other, will grant a *mandamus* for a rate to be levied on the diſtrict bound to repair the indicted part of the road. But the *mandamus* muſt be ſpecial, ſuggeſting that the part of the highway which was the ſubject of the indictment, lay wholly in the townſhip indicted, and that the two townſhips were ſeparately bound to repair their reſpective parts of the highway, in order to afford the indicted townſhip an opportunity of traverſing the facts.

Rex *v.* Townſend, Dougl. 422.

See Rex *v.* Clifton, 5. Term Rep. 498.

As to THE FOURTH POINT, *viz.* In what manner the profits of lands ſettled in truſt for the repairs of the highways ſhall be employed.

† *Sect.* 54. It is enacted by the abovementioned ſtatute of 13. Geo. 3. c. 78. ſ. 52. " That where any lands have
" been, or ſhall be given for the maintenance of cauſe-
" ways, pavements, highways, and bridges, all ſuch per-
" ſons who are, or ſhall be enfeoffed or truſted with any
" ſuch lands, ſhall let them to farm at the moſt improved
" yearly value, without fine; and that the juſtices of the
" peace, in their open ſeſſions, ſhall and may inquire, by
" ſuch ways and means as they ſhall think fitting, into the
" value of all ſuch lands ſo given, or to be given, and order
" the improvement and employment of the rents and pro-
" fits thereof according to the will and direction of the
" donor of ſuch lands, if they find that the perſons ſo in-
" truſted have been negligent or faulty in the performance
" of

Perſons enfeoffed with lands.

" of their truſt, except ſuch lands have been given for the " uſes aforeſaid to any college or hall in either of the " univerſities of this kingdom, which have viſitors of their " own."

As to THE THIRD GENERAL HEAD of this chapter, *viz.* In what manner the highway is to be enlarged.

(3) If a highway be not much wanted for the uſe of the publick, the Court will not grant an *information* for ſuffering it to be out of repair. Sayer 93.

† *Sect.* 55. It is enacted by the 13. Geo. 3. c. 78. ſ. 15. " That the ſaid ſurveyors of the highways ſhall make, ſupport, and maintain, or cauſe to be made, ſupported, and " maintained, every public (3) cartway leading to any " market town, twenty feet wide at the leaſt; and every " public horſeway or driftway, eight feet wide at the leaſt, " if the ground between the fences incloſing the ſame will " admit thereof."

Widening roads.

† *Sect.* 56. But by 13. Geo. 3. c. 78. ſ. 16. " Where it " ſhall appear, upon the view of any two juſtices, that the " ground or ſoil of any highway between the fences " thereof is not of ſufficient breadth, and may be conve- " niently widened and enlarged, or that the ſame cannot be " conveniently enlarged and made commodious for travellers, " without diverting and turning the ſame; ſuch juſtices " ſhall, and they are hereby impowered, within their re- " ſpective juriſdictions, to order ſuch highways reſpectively " to be widened and enlarged, or diverted and turned, in " ſuch manner as they ſhall think fit, ſo that the ſaid high- " ways, when enlarged and diverted, ſhall not exceed thirty " feet in breadth; and that neither of the ſaid powers do ex- " tend to pull down any houſe or building, or to take away " the ground of any garden, park, paddock, court, or yard."

Cowper 648. Vide alſo 2. Burr. 799.

† *Sect.* 57. It hath been decided, that this power given to two juſtices to order *any* highway to be widened, extends to roads repairable *ratione tenuræ*; and upon diſobedience to ſuch order, the party may either be proceeded againſt ſummarily under the ſtatute, or by indictment as an offence at common law.

Surveyors to recompence owners of lands.

† *Sect.* 58. By 13. Geo. 3. c. 78. ſ. 16. " For the ſatis- " faction of the perſon or perſons, bodies politick or corpo- " rate, who are ſeiſed or poſſeſſed of, or intereſted in their " own right, or in truſt for any other perſon or perſons, in " the ſaid ground that ſhall be laid into the ſaid highways " reſpectively, ſo to be enlarged, or through which ſuch " highway ſo to be diverted and turned ſhall go, the ſaid " ſurveyor, under the direction and with the approbation " of the ſaid juſtices, ſhall, and is hereby empowered to " make

" make an agreement with him, her, or them, for the re-
" compence to be made for ſuch ground, and for the mak-
" ing ſuch new ditches and fences as ſhall be neceſſary, ac-
" cording and in proportion to their ſeveral and reſpective
" intereſts therein, and alſo with any other perſon or per-
" ſons, bodies politick or corporate, that may be injured
" by the enlarging, altering, or diverting ſuch highways
" reſpectively, for the ſatisfaction to be made to him, her,
" or them reſpectively, as aforeſaid.

† *Sect.* 59. By 13. Geo. 3. c. 78. ſ. 16. " If the ſaid ſur- The recom-
" veyor, under the direction, and with the approbation of pence may be
" the ſaid juſtices, cannot agree with the ſaid perſon or per- eſtimated by a
" ſons, bodies politick or corporate, or if he, ſhe, or they, jury, &c.
" cannot be found, or ſhall refuſe to treat, or take ſuch re-
" compence or ſatisfaction as ſhall be offered to them re-
" ſpectively by ſuch ſurveyor; then the juſtices of the
" peace, at any general quarter ſeſſions to be holden for the
" limit wherein ſuch ground ſhall lie, upon certificate in
" writing, ſigned by the juſtices making ſuch view as afore-
" ſaid, of their proceedings in the premiſes, and upon proof
" of fourteen days notice in writing having been given by
" the ſurveyor of ſuch pariſh, townſhip, or place, to the
" owner, occupier, or other perſon or perſons, bodies po-
" litick or corporate, intereſted in ſuch ground, or to his,
" her, or their guardian, truſtee, clerk, or agent, ſignify-
" ing an intention to apply to ſuch quarter ſeſſions for the
" purpoſe of taking ſuch ground, ſhall impanel a jury of
" twelve diſintereſted men out of the perſons returned to
" ſerve as jurymen at ſuch quarter ſeſſions; and the ſaid
" jury ſhall, upon their oaths, to the beſt of their judg-
" ment, aſſeſs the damages to be given, and recompence
" to be made, to the owners and others intereſted as afore-
" ſaid in the ſaid ground, for their reſpective intereſts, as
" they ſhall think reaſonable, not exceeding forty years pur-
" chaſe for the clear yearly value of the ground ſo laid out,
" and likewiſe ſuch recompence as they ſhall think reaſon-
" able, for the making of new ditches and fences on the
" ſide or ſides of the ſaid highways that ſhall be ſo enlarged
" or diverted, and alſo ſatisfaction to any perſon or per-
" ſons, bodies politick or corporate, that may be otherwiſe
" injured by the enlarging or diverting the ſaid highways
" reſpectively."

† *Sect.* 60. And by 13. Geo. 3. c. 78. ſ. 18. " Upon pay- On payment
" ment or tender of the money ſo to be awarded and aſſeſſed of money aſ-
" to the perſon or perſons, bodies politick or corporate, in- ſeſſed, the
" titled to receive the ſame, or leaving it in the hands of ground to be
" the clerk of the peace of ſuch limit, in caſe ſuch perſon deemed a pub-
lic highway.

" or

" or perſons, bodies politick or corporate, cannot be found, " or ſhall refuſe to accept the ſame, for the uſe of the " owner of, or others intereſted in, the ſaid ground, the " intereſt of the ſaid perſon or perſons, bodies politick or " corporate, in the ſaid ground, ſhall be for ever diveſted " out of them, and the ſaid ground, after ſuch agreement " or verdict as aforeſaid, ſhall be eſteemed and taken to be " a public highway to all intents and purpoſes what- " ſoever; ſaving nevertheleſs to the owner or owners of " ſuch ground all mines, minerals, and foſſils, lying under " the ſame, which can or may be got without breaking the " ſurface of the ſaid highway; and alſo all timber and " wood growing upon ſuch ground, to be fallen and taken " by ſuch owner or owners within one month after ſuch " order ſhall have been made, or in default thereof, to be " fallen by the ſaid ſurveyor or ſurveyors, within the re- " ſpective months aforeſaid, and laid upon the land ad- " joining, for the benefit of the ſaid owner or owners."

Where there is not money ſufficient, aſſeſſments may be raiſed by order of the juſtices of the quarter ſeſſions.

† *Sect.* 61. And by 13. Geo. 3. c. 78. ſ. 16. " Where " there ſhall not appear ſufficient money in the hands of " the ſurveyor or ſurveyors for the purpoſes aforeſaid, " then the ſaid two juſtices, in caſe of agreement, or the " ſaid court of quarter ſeſſions, after ſuch verdict as afore- " ſaid, ſhall order an equal aſſeſſment to be made, levied, " and collected, upon all and every the occupiers of lands, " tenements, woods, tithes, and hereditaments, in the " reſpective pariſhes, townſhips, or places, where ſuch " highways ſhall lie, and direct the money to be paid to " the perſon or perſons, bodies politick or corporate, ſo " intereſted, in ſuch manner as the ſaid juſtices, or court " of quarter ſeſſions reſpectively, ſhall direct and appoint: " and the money thereby raiſed ſhall be employed and ac- " counted for, according to the order and direction of " the ſaid juſtices, or court of quarter ſeſſions reſpectively, " for and towards the purchaſing the land to enlarge or " divert the ſaid highways, and for the making the ſaid " ditches and fences, and alſo ſatisfaction for the damages " ſuſtained thereby."

Not exceeding 6d. in the pound.

† *Sect.* 62. By 13. Geo. 3. c. 78. ſ. 16. " The ſaid aſ- " ſeſſment, if not paid within ten days after demand, ſhall, by " order of the ſaid juſtices, or court of quarter ſeſſions re- " ſpectively, be levied by the ſaid ſurveyor, in the manner " herein-after mentioned: provided that no ſuch aſſeſſment " to be made in any one year, ſhall exceed the rate of ſix- " pence in the pound of the yearly value of the lands, tene- " ments, woods, tithes, and hereditaments, ſo aſſeſſed."

Sect.

† *Sect.* 63. And by 13. Geo. 3. c. 78. ſ. 17. it is further enacted, "That when any ſuch new highways ſhall be made "as aforeſaid, the old highway ſhall be ſtopped up, and the "land and ſoil thereof ſhall be ſold by the ſaid ſurveyor, "with the approbation of the ſaid juſtices, to ſome perſon "or perſons whoſe lands adjoin thereto, if he, ſhe, or they, "ſhall be willing to purchaſe the ſame; if not to ſome other "perſon or perſons, for the full value thereof.

Old highway and ſoil may be ſold by the ſurveyor;

† *Sect.* 64. But by 13. Geo. 3. c. 78. ſ. 17. "If ſuch old "road ſhall lead to any lands, houſe, or place, which cannot, "in the opinion of ſuch juſtices reſpectively, be accommo-"dated with a convenient way and paſſage from ſuch new "highway, which they are hereby authoriſed to order and "lay out, if they find it neceſſary; then, and in ſuch caſe, the "ſaid old highway ſhall only be ſold ſubject to the right of "way and paſſage to ſuch lands, houſe, or place reſpectively, "according to the ancient uſage in that reſpect; and the "money ariſing from ſuch ſale, in either of the ſaid caſes, "ſhall be applied towards the purchaſe of the land where "ſuch new highway ſhall be made.

ſubject to the ancient right of way to private houſes.

† *Sect.* 65. And by 13. Geo. 3. c. 78. ſ. 17. "Upon pay-"ment or tender of the money ſo to be agreed for as afore-"ſaid, and upon a certificate being ſigned by the ſaid two "juſtices, or by the chairman of the ſaid court of quarter "ſeſſions, in caſe the ſame ſhall be determined there, de-"ſcribing the lands ſo ſold, and expreſſing the ſum ſo "agreed for, and directing to whom the ſame ſhall be paid, "and upon the purchaſer's taking a receipt for ſuch pur-"chaſe-money from the perſon intitled to receive the ſame, "by an indorſement on the back of ſuch certificate, the "ſoil of ſuch old highway ſhall become veſted in ſuch pur-"chaſer and his heirs; but all mines, minerals, and foſſils, "lying under the ſame, ſhall continue to be the property "of the perſon or perſons who would, from time to time, "have been intitled to the ſame, if ſuch old highway had "continued there.

The old highways ſhall be veſted in the purchaſers on payment of the money, but the mines and minerals reſerved to the owners.

† *Sect.* 66. And by 13. Geo. 3. c. 78. ſ. 18. it is alſo enacted, "That in caſe ſuch jury ſhall give in and deliver "a verdict for more monies, as a recompence for the right, "intereſt, or property, of any perſon or perſons, bodies "politick or corporate, in ſuch lands or grounds, or for "the making ſuch fence, or for ſuch damage or injury to "be ſuſtained by him, her, or them reſpectively, as afore-"ſaid, than what ſhall have been propoſed and offered by "the ſaid ſurveyor, before ſuch application to the ſaid "court of quarter ſeſſions as aforeſaid; that then, and in "ſuch

Coſts of proceedings by whom payable.

" ſuch caſe, the coſts and expences attending the ſaid " ſeveral proceedings ſhall be borne and paid by the ſur- " veyor of the ſaid highway, out of the monies in his or " their hands, or to be aſſeſſed and levied by virtue and " under the powers of this act; but if ſuch jury ſhall give " and deliver a verdict for no more, or for leſs monies than " ſhall have been ſo offered and propoſed by the ſaid ſur- " veyor before ſuch application to the ſaid court of quarter " ſeſſions; that then the ſaid coſts and expences ſhall be " borne and paid by the perſon or perſons, bodies politick " or corporate, who ſhall have refuſed to accept the recom- " pence and ſatisfaction ſo offered to him, her, or them, " as aforeſaid."

(4) The fact of non-repair is traverſable when a juſtice preſents a highway on his own view. Rex v. Juſtices of Wilts, 1. Black. 467.

† *Sect.* 67. By 13. Geo. 3. c. 78. ſ. 19. it is alſo further enacted, " That when it ſhall appear, upon the view (4) " of any two or more of the ſaid juſtices of the peace, that " any public highway, not in the ſituation herein-before " deſcribed, or public bridleway or footway, may be di- " verted, ſo as to make the ſame nearer or more commo- " dious to the publick, and the owner or owners of the lands " and grounds through which ſuch new highway, bridle- " way, or footway, is propoſed to be made, ſhall con- " ſent thereto, by writing under his or their hand and " ſeal, or hands and ſeals, it ſhall and may be lawful, by " order of ſuch juſtices, at ſome ſpecial ſeſſions, to divert " and turn, and to ſtop up ſuch footway, and to divert, " turn, and ſtop up, and incloſe, ſell, and diſpoſe of ſuch " old highway or bridleway, and to purchaſe the ground " and ſoil for ſuch new highway, bridleway, or footway, " by ſuch ways and means, and ſubject to ſuch excep- " tions and conditions, in all reſpects, as herein-before " mentioned with regard to highways to be widened or " diverted."

Perſons injured by proceeding on an *ad quod damnum* may appeal.

† *Sect.* 68. By 13. Geo. 3. c. 78. ſ. 19. " Where any ſuch " highway, bridleway, or footway, herein-laſt before de- " ſcribed, ſhall be ſo ordered to be ſtopped up or incloſed, and " ſuch new highway, bridleway, or footway, ſet out and ap- " propriated in lieu thereof, as aforeſaid, it ſhall and may be " lawful for any perſon or perſons injured or aggrieved by " any ſuch order or proceeding, or by the incloſure of any " road or highway, by virtue of any inquiſition taken upon " any writ of *ad quod damnum*, to make his or their complaint " thereof, by appeal to the juſtices of the peace, at the next " general quarter ſeſſions, which ſhall be holden within the " limit where the ſame ſhall lie, after ſuch order made, or " proceeding had, as aforeſaid, upon giving ten days notice, " in writing, of ſuch appeal to the ſurveyor and party inte-

" reſted

" reſted in ſuch incloſure, if there ſhall be ſufficient time " for that purpoſe; if not, ſuch appeal may be made upon " the like notice to the next ſubſequent quarter ſeſſions of " the peace; which courts of quarter ſeſſions are hereby " reſpectively authoriſed and impowered to hear and finally " determine ſuch appeal.

† *Sect.* 69. And by 13. Geo. 3. c. 78. ſ. 19. " If no ſuch appeal be made, or, being made, ſuch order and proceedings " ſhall be confirmed by the ſaid court, the ſaid incloſures " may be made, and the ſaid ways ſtopped, and the proceed- " ings thereupon ſhall be binding and concluſive to all per- " ſons whomſoever; and the new highway, bridleway, or " footway, ſo to be appropriated and ſet out, ſhall be, and " for ever after continue, a public highway, bridleway, " or footway, to all intents and purpoſes whatſoever."

Upon this clauſe the following determinations have been made.

† *Sect.* 70. FIRST, That though the appeal is directed to the next quarter ſeſſions, yet the juſtices may adjourn the quarter ſeſſions itſelf to another day, or they may adjourn the particular matter to a ſubſequent ſeſſions. *Ex parte* Venner, 3. Atk. 771.

† *Sect.* 71. SECONDLY, That this appeal is a waiver to any objection of ſurprize, with reſpect to the mal-execution of the writ of *ad quod damnum*; for the ſtatute has put the juſtices in the room of the traverſe, and if the party inſtead of appealing had traverſed the inquiſition, and iſſue had been taken on it and a verdict found, he could not have applied to the court of chancery upon a ſuggeſtion of ſurprize, and a fraudulent and clandeſtine execution of the writ. *Ex parte* Venner, 3. Atk. 767. 771.

† *Sect.* 72. THIRDLY, That even upon ſuch an enquiry, the Court will not regard any complaint upon the ground of public inconvenience, for that would be ſetting up a juriſdiction in oppoſition to a juriſdiction appropriated by the act of parliament to the quarter ſeſſions only: but if a jury have manifeſtly done contrary to the general good of the country, it may afford a ſtrong corroborating evidence of ſurprize. 3. Atk. 770.

† *Sect.* 73. FOURTHLY, That it is not neceſſary for the ſheriff to give formal notice of the execution of the writ; it is ſufficient if the jury be ſummoned impartially, and the inquiſition is made in a fair and open manner. 3. Atk. 770.

† *Sect.* 74. FIFTHLY, That where a new road is made in purſuance of ſuch writ, and inquiſition thereupon found, 3. Atk. 766.

after the perſon who ſued out the writ has once made the road, the pariſhioners ought to keep it in repair for the future, becauſe being diſcharged from repairing the old road, no new burthen is laid upon them, but their labour is only transferred from one place to another.

Venner *v.* Lucy, 3 Atk. 766.

† *Sect.* 75. SIXTHLY, That if the new road lie in another pariſh, then the perſon who ſued out the writ and his heirs ought not only to make it, but to keep it in repair; otherwiſe the pariſhioners of ſuch other pariſh would have a new charge upon them, and no recompence by the former road being taken away.

No old highway ſhall be incloſed until the new highway is completed.

† *Sect.* 76. But by 13. Geo. 3. c. 78. ſ. 19. "No incloſures "of ſuch old highways or bridleway, or ſtoppage of ſuch "footway, ſhall be made, until ſuch new highways, bridleway, "or footway, ſhall be completed, and put into good condi- "tion and repair, and ſo certified by two juſtices of the "peace, upon view thereof, which certificate ſhall be re- "turned to the clerk of the peace, and inrolled amongſt the "records of ſeſſions; but from and after ſuch certificate, "ſuch old highways, bridleway, or footway, ſhall and may "be ſtopped up, and the ſoil of ſuch old highways or bri- "dleway ſold, in the manner, and ſubject to the reſerva- "tions and reſtrictions herein-before mentioned with reſpect "to highways to be enlarged or diverted by virtue of this "act."

No proſecution ſhall be had after an old highway has been turned, or a new highway made for twelve months. Vide Douglas 749. B. R. H. 2. Shower 28. Levinz 1234. W. Jones 296. L. Raym. 725. Godbolt 4, 52. 3. Comm. p. 36.

† *Sect.* 77. And by 13. Geo. 3. c. 78. ſ. 19. "Where any "highway, bridleway, or footway, hath been diverted and "turned above twelve months, either from neceſſity, where "the ſame have been deſtroyed by floods, or ſlips of the "ground on which they were made, or from other cauſes "and motives, if new highways, bridleways, or footways, "have been made in lieu thereof, nearer or more commo- "dious to the publick, and the ſame have been acquieſced "in, and no ſuit or proſecution hath been commenced for "the diverting or turning the ſame, every new highway, "bridleway, or footway, ſet out and uſed in the place of "that ſo diverted and turned, ſhall from henceforth be the "public highway, bridleway, or footway, to all intents and "purpoſes whatſoever."

Com. 1. Chemin D. 6.

New highways ſhall be repaired by thoſe who were liable to repair the old highways.

† *Sect.* 78. And by 13. Geo. 3. c. 78. ſ. 19. "All perſons "liable to the repair of any ſuch old highways, bridleway, "or footway, ſo diverted and turned, or to be diverted and "turned, as aforeſaid, ſhall, in the ſame manner, be and "continue liable to the repair of ſuch new highways, bri- "dleway, or footway, except where any agreement ſhall have

"been

" been made relative to ſuch repairs between the parties in-
" tereſted therein, which hath laid the burthen thereof, or
" any part thereof, upon any other perſon or perſons, in
" which caſe the ſame ſhall be obſerved."

† *Sect.* 79. But by 13. Geo. 3. c. 78. ſ. 20. it is pro- How the old highways, or the lands lying between the fences inclosing the ſame, ſhall be diſpoſed of.
vided, " That no common land, lying between the fences
" of any old highway to be ſtopped up or incloſed by virtue
" of this act, ſhall be incloſed; and where the land lying
" between the fences of ſuch highway, not being common
" land, ſhall, upon a medium, exceed thirty feet in breadth,
" and not extend to fifty feet in breadth, the ſame ſhall not
" be ſtopped up or incloſed, until ſatisfaction ſhall be made
" to the owner of ſuch land, for ſo much thereof as ſhall
" exceed the ſaid breadth of thirty feet; and if the parties
" cannot agree in the ſatisfaction ſo to be made, the ſame
" ſhall be adjuſted by the ſaid juſtices, or the jury, if a jury
" ſhall be impanelled."

† *Sect.* 80. And by 13 Geo. 3. c. 78. ſ. 20. " If the land
" between the fences incloſing ſuch highways, not being
" common land, ſhall exceed fifty feet in breadth upon a
" medium, or if the ſaid old road, ſo to be diverted or
" turned, ſhall lie through the open field or ground belong-
" ing to any particular perſon or perſons, ſuch perſon or
" perſons, and alſo the perſon or perſons intitled to the
" land between the fences on the ſide of ſuch highway, ſhall
" reſpectively hold and enjoy the land and ſoil of ſuch old
" highway, and pay to the ſurveyor, for the uſe of the high-
" ways, ſo much money as ſhall be agreed upon between the
" parties; or if they cannot agree, ſo much as ſhall be deemed
" and adjudged by the ſaid juſtices, or jury, if ſuch jury
" ſhall be impanelled as aforeſaid, to be adequate to the
" purchaſe of it, eſtimating ſuch highway at thirty feet in
" breadth, upon an average."

† *Sect.* 81. And by 13. Geo. 3. c. 78. ſ. 21. it is further Where old footways are ſtopped up, and new ones laid out, in what manner the owners of the lands ſhall make and receive ſatisfaction.
enacted, " That where any footway ſhall be diverted by
" virtue of this act through the land belonging to the ſame
" perſon who owned the land through which ſuch old foot-
" way lay, the ſame ſhall be adjudged and deemed *an ex-*
" *change* only, and no ſatisfaction or compenſation ſhall be
" made, unleſs the land to be uſed for ſuch new footway
" ſhall be of greater length, and of greater value than the
" land uſed for ſuch old footway."

† *Sect.* 82. And by 13. Geo. 3. c. 78. ſ. 21. " Where the
" ſaid footway ſhall not be turned through the lands belong-
" ing to the ſame perſon, the damage occaſioned by ſuch old

" footway to the lands through which it lay, if the parties " intereſted ſhall not agree in adjuſting the ſame, ſhall be " adjudged by two indifferent perſons, the one to be named " by the owner of the land, and the other by the ſaid two " juſtices; and if the perſon ſo to be nominated cannot " agree therein, they ſhall chuſe ſome third perſon to ad- " judge the ſame, whoſe determination ſhall be final; and " the money at which ſuch damages ſhall be aſſeſſed ſhall be " applied in making ſatisfaction to the owner or owners of " the land through which ſuch new footway ſhall be made."

Juſtices to order unneceſſary highways to be ſtopped

† *Sect.* 83. And by 13. Geo. 3. c. 78. ſ. 22. it is further enacted, " That if in any pariſh, townſhip, or place, where " any highway ſhall be diverted and turned by virtue of " this act, it ſhall appear to the juſtices, who are hereby " authoriſed to view or inquire into the ſame, that there " are other highways within ſuch pariſh, townſhip, or place, " beſides that ſo to be diverted and turned, which may, " without inconvenience to the public, be diverted into " ſuch new highway hereby authoriſed to be made, or into " any other highway or highways within ſuch pariſh, town- " ſhip, or place, and the charge of repairing ſuch highway or " highways may be thereby ſaved to ſuch pariſh, townſhip, or " place, it ſhall and may be lawful for ſuch juſtices to order " ſuch highway or highways, which ſhall appear them unne- " ceſſary, to be ſtopped up, and the ſoil thereof ſold, in ſuch " manner, and ſubject to ſuch reſtrictions, and ſuch right " of appeal to the party or parties aggrieved thereby, as are " herein-before reſpectively directed and given concerning " the highways to be ſtopped up or incloſed."

6. Mod. 255. Ld. Raym. 1175. Co. Lit. 56. a.

Page *v.* Harwood, Cald. 228.

† *Sect.* 84. It hath been determined, that the above clauſes make but one proviſion; that the powers given under them were intended to make but one tranſaction; that it muſt be one entire act of the magiſtrates, and therefore that two roads cannot be reſpectively ſtopped up under the 19. & 22. Sections; for this power to ſhut up roads is only given where there is a new road to be ſet out.

As to THE FOURTH GENERAL HEAD of this Chapter, *viz.* In what manner the ſurveyors of the highways ſhall be appointed.

On the 22d Sept. yearly a liſt of ten perſons to be made, &c.

† *Sect.* 85. It is enacted by the 13. Geo. 3. c. 78. ſ. 1. " That upon the twenty-ſecond day of *September*, in every " year, unleſs that day ſhall be *Sunday*, and then on the day " following, the conſtables, headboroughs, tythingmen, " churchwardens, ſurveyor of the highways, and houſe- " holders, being aſſeſſed to any parochial or public rate of " every

" every pariſh, townſhip, or place, ſhall aſſemble together " at the church or chapel, or if there ſhall be no church or " chapel, then at the uſual place of public meetings for ſuch " pariſh, townſhip, or place, at the hour of eleven in the " forenoon; and the major part of them, ſo aſſembled, ſhall " make a liſt of the names of at leaſt ten perſons living " within ſuch reſpective pariſhes, townſhips, or places, " who, each of them have an eſtate in lands, tenements, or " hereditaments, lying within ſuch reſpective pariſh, town- " ſhip or place, in their own right, or in the right of their " wives, of the value of ten pounds by the year; or a per- " ſonal eſtate of the value of one hundred pounds; or are " occupiers or tenants of houſes, lands, tenements, or he- " reditaments, of the yearly value of thirty pounds: and if " there ſhall not be ten perſons having ſuch qualifications " as aforeſaid, then they ſhall inſert in ſuch liſt the names " of ſo many of ſuch perſons as are ſo qualified, as above " required, together with the names of ſo many of the moſt " ſufficient and able inhabitants of ſuch pariſh, townſhip, " or place, not ſo qualified, as ſhall make up the number " ten, if ſo many can be found; if not, ſo many as ſhall be " there reſident, to ſerve the office of ſurveyor of the high- " ways."

† *Sect.* 86. And by 13. Geo. 3. c. 7. ſ. 1. " The conſtable, " headborough, or tythingman, of ſuch pariſh, townſhip, or " place, ſhall, within three days after ſuch meeting, tranſmit " a duplicate of ſuch liſt to one of the juſtices of the peace " within the limit of the county, riding, diviſion, hundred, " city, corporation, precinct, or liberty, where ſuch pariſh, " townſhip, or place, ſhall lie, living in or near the ſame; " and ſhall alſo return and deliver the original liſt, made " and agreed upon at ſuch meeting, to the juſtices of the " peace, at their ſpecial ſeſſions to be held for the highways " within that limit, in the week next after the *Michaelmas* " general quarter ſeſſions of the peace in every year; and " ſhall alſo, within three days after making the ſaid liſt, give " perſonal notices to, or cauſe notices in writing to be left " at the places of abode of, the ſeveral perſons contained in " ſuch liſt, informing them of their being ſo named, to the " intent that they may ſeverally appear before the juſtices " at the ſaid ſpecial ſeſſions, to accept ſuch offices, if they " ſhall be appointed thereto, or to ſhew cauſe, if they have " any, againſt their being appointed."

A duplicate of ſuch liſt ſhall be tranſmitted to one of the juſtices, and the original liſt to the ſpecial ſeſſions, &c.

Notices to the perſons contained in the liſt.

† *Sect.* 87. And by 13 Geo. 3. c. 78. ſ. 1. " The ſaid juſ- " tices are hereby authoriſed and required to hold ſuch ſpecial " ſeſſions at ſuch convenient place or places, within their " reſpective limits, as they, in their diſcretion, ſhall judge " proper;

The juſtices are to give ten days notice of holding ſpecial ſeſſions to

the conſtables, &c. and may appoint qualified ſurveyors from the liſt, or other inhabitants, &c.

" proper; and to give notice of the time and place where " they intend to hold the ſame, to the conſtables, headbo- " roughs, or tythingmen, of every ſuch pariſh, townſhip, " or place, at leaſt ten days before the holding of the ſaid " ſeſſions; and the ſaid juſtices, then and there, from the " ſaid liſts, according to their diſcretion, and the largeneſs " of the pariſh, townſhip, or place reſpectively, by warrant " under their hands and ſeals, ſhall appoint one, two, or " more, of ſuch perſons as aforeſaid, if he or they ſhall, in " the opinion of ſuch juſtices, be qualified for the office of " ſurveyor; if not one, two or more of the other ſubſtan- " tial inhabitants or occupiers of lands, tenements, woods, " tithes, or hereditaments, within ſuch pariſh, townſhip, " or place, living within three miles thereof, and within " the ſame county, fit and proper to ſerve the office of ſur- " veyor of the highways for ſuch pariſh, townſhip, or place, " if any ſuch can be found."

Which appointment ſhall be notified by the conſtables.

† *Sect.* 88. By 13. Geo. 3. c. 78. ſ. 1. " Such appointment " ſhall, by the conſtables, headboroughs, or tythingmen " aforeſaid, be notified to every perſon ſo appointed by the " ſaid juſtices, within three days after ſuch appointment, by " ſerving him with the ſaid warrant, or by leaving the ſame, " or a true copy thereof, at his houſe, or uſual place of abode; " and every perſon ſo appointed, if he accepts the ſaid office, " ſhall be ſurveyor of the highways for the ſaid pariſh, town- " ſhip, or place for the year enſuing, and ſhall take upon " him, and duly execute the office aforeſaid; and the ſaid " juſtices ſhall then and there give ſuch of the ſaid ſurveyors " as ſhall perſonally appear before them a charge, for the " better performance of their duty according to the direc- " tions of this act."

And the ſurveyor hold his office for a year.

Penalty on refuſing to ſerve.

† *Sect.* 89. And by 13. Geo. 3. c. 78. ſ. 1. " If any of the " ſaid perſons ſo appointed, whoſe names are contained in " ſuch liſt, and who were ſerved with the ſaid notice, ſhall " refuſe or neglect to appear at the ſaid ſpecial ſeſſions, and " accept the ſaid office, if appointed thereto, in manner " aforeſaid, or ſhall not, within ſix days after being ſerved " with ſuch warrant of appointment, ſignify his acceptance " thereof, either in perſon or by writing, to one of the ſaid " juſtices, he ſhall forfeit five pounds."

† *Sect.* 90. And by 13. Geo. 3. c. 78. ſ. 1. " In caſe any " perſon ſo appointed by the ſaid juſtices, whoſe name was " not contained in ſuch liſt, ſhall refuſe or neglect to accept " the ſaid office, or ſhall not, within ſix days after being " ſerved with ſuch appointment, ſhew to one of the juſtices " ſigning ſuch appointment ſufficient cauſe why he ſhould " not ſerve ſuch office, he ſhall forfeit fifty ſhillings."

† *Sect.*

† *Sect.* 91. But by 13. Geo. 3. c. 78. ſ. 1. it is provided, "That no perſon who hath been appointed and ſerved the "office of ſurveyor for one year, ſhall be liable to be ap- "pointed ſurveyor for the ſame pariſh, townſhip, or place, "within three years from the time of ſuch firſt appoint- "ment and ſervice, unleſs he ſhall conſent thereto." No perſon who hath ſerved one year, to ſerve again within three years for ſame place without his conſent.

† *Sect.* 92. But by 13. Geo. 3. c. 78. ſ. 1. "If no ſuch liſt "ſhall be made and returned, or if the ſaid juſtices ſhall make "ſuch appointment as aforeſaid, and the perſon or perſons ſo "appointed ſhall refuſe to ſerve the ſaid office, the ſaid juſ- "tices, or any two of them, ſhall and may, and are hereby "required, at the ſaid ſpecial ſeſſions, or at ſome ſubſequent "ſpecial ſeſſions, to be held within one month after, to "nominate and appoint ſome other perſon or perſons to be "ſurveyor of ſuch pariſh, townſhip, or place, whom they "ſhall judge proper to execute that office, and ſhall and may "fix ſuch ſalary to be paid to ſuch ſurveyor, to be appoint- "ed as herein laſt before mentioned, out of the ſaid forfei- "tures, and all other forfeitures, fines, penalties, aſſeſſ- "ments, and compoſitions, to be paid, levied, and raiſed, "under the authority of this act, within ſuch pariſh, town- "ſhip, or place reſpectively, as ſuch juſtices ſhall think fit, "not exceeding one eighth part of what ſhall have been "raiſed by an aſſeſſment of ſixpence in the pound, for the "uſe of the highways within ſuch pariſh, townſhip, or "place, where any ſuch aſſeſſment ſhall have been raiſed, "and obſerving the ſame reſtriction, as near as they can, "from the beſt information they ſhall be able to get of the "probable amount of ſuch an aſſeſſment, where none hath "been already made." If no ſuch liſt be made, or the perſon appointed refuſe to ſerve, another perſon may be appointed at a ſubſequent ſpecial ſeſſions, and a ſalary fixed.

† *Sect.* 93. And by 13. Geo. 3. c 78. ſ. 1. "The ſaid juſ- "tices ſhall and may, if they think fit, require the conſtables, "headboroughs, tythingmen, and ſurveyor, of every ſuch "pariſh, townſhip, and place, or any of them, to return to "them, at ſuch time and place as they ſhall appoint, an "account, in writing, of the ſum which ſuch aſſeſſment of "ſixpence in the pound hath raiſed, or will, in his or their "opinion, raiſe within ſuch pariſh, townſhip, or place."

† *Sect.* 94. And by 13. Geo. 3. c. 78. ſ. 1. "If the conſta- "bles, headboroughs, tythingmen, churchwardens, ſurvey- "ors of the highway, and ſuch houſeholders as aforeſaid, of "any pariſh, townſhip, or place, ſhall neglect or refuſe to "make ſuch liſt as aforeſaid; or if the conſtable, headbo- "rough, or tythingman, of any pariſh, townſhip, or place, "ſhall not return the ſaid liſt of names, when made, and ſuch "duplicate thereof as aforeſaid, and give ſuch notice or Aſſeſſments to be returned in writing.

" notices, and ſerve ſuch warrant or warrants as in this act is " directed; or if the ſaid conſtable, headborough, tything- " man, and ſurveyor, or any of them, ſhall neglect to return " ſuch account of the amount of ſuch aſſeſſment as aforeſaid, " when ſo required as aforeſaid, every conſtable, headbo- Penalty on conſtables. " rough, tythingman, churchwarden, or ſurveyor, ſo neg- " lecting or refuſing, in any of the ſaid caſes, ſhall, for every " ſuch default reſpectively, forfeit the ſum of forty ſhillings."

4. Burr. 2454. † *Sect.* 95. The Court will not compel the juſtices to appoint a ſurveyor out of the liſt returned to them by the pariſh, if ſuch liſt has been procured by indirect and fraudulent means, at a riotous aſſembly of the lower ſort of people: but they ſeemed to incline very ſtrongly that it is not abſolutely neceſſary that the conſtable, headborough, tythingman, &c. as mentioned in the act, ſhould be preſent, but that the Legiſlature only meant it to be a full parochial meeting, without intending that each of theſe bodies ſhould be ſuch eſſential conſtituent parts of it, that the acts of the meeting would be annulled and made void by the abſence of thoſe officers.

How the aſſiſtant ſurveyor is to be appointed, penalty for refuſing to ſerve, and the appointment of another in his ſtead. † *Sect.* 96. By 13. Geo. 3. c. 78. ſ. 2. it is further enacted, " That in all caſes where the ſaid juſtices, upon neglect, or " refuſal of the perſon ſo nominated ſurveyor as aforeſaid to " accept the ſaid office, ſhall appoint any other perſon for ſuch " ſurveyor, with a ſalary as aforeſaid, the ſaid juſtices ſhall, " and are hereby required to appoint one ſubſtantial inha- " bitant of ſuch pariſh, townſhip, or place, for aſſiſtant to " ſuch ſurveyor in the ſeveral matters, and for the ſeveral " purpoſes hereafter mentioned, until the next annual ap- " pointment of ſurveyors, according to the directions of " this act."

† *Sect.* 97. " And if the perſon ſo appointed aſſiſtant " ſhall, upon notice of ſuch appointment, refuſe to accept " that office, he ſhall forfeit the ſum of fifty ſhillings."

† *Sect.* 98. And by 13. Geo. 3. c. 78. ſ. 2. in that caſe, " It " ſhall and may be lawful for ſuch juſtices to appoint any " other ſubſtantial inhabitant of ſuch pariſh, townſhip, or " place, for aſſiſtant to ſuch ſurveyor, in manner and for the " time aforeſaid; and if ſuch ſecond appointed aſſiſtant ſhall " decline or refuſe to accept the ſaid office, he ſhall, in like " manner, forfeit the ſum of fifty ſhillings."

† *Sect.* 99. And by 13. Geo. 3. c. 78. ſ. 2. " The ſaid juſ- " tices ſhall and may appoint any other perſon, inhabiting in " ſuch pariſh, townſhip, or place, aſſiſtant to ſuch ſurveyor, " who

" who ſhall be intitled to the ſaid forfeitures herein laſt be-
" fore mentioned, and alſo to ſome further allowance by way
" of ſalary (to be paid as the ſurveyor's ſalary is hereby di-
" rected to be paid), if the ſaid juſtices ſhall think any ſuch
" ſalary neceſſary, and ſhall order the ſame, which they are
" hereby authoriſed to do: provided, that no perſon ſo ap-
" pointed aſſiſtant for one year ſhall be liable to be appoint-
" ed aſſiſtant for the ſame pariſh, townſhip, or place, within
" three years next following ſuch firſt appointment, with-
" out his conſent."

† *Sect.* 100. And by 13. Geo. 3. c. 78. ſ. 3. it is further enacted, " That the ſurveyor of every pariſh, townſhip, and " place, who ſhall not reſide therein, but ſhall be appointed " with ſuch ſalary as aforeſaid, ſhall, if required by the " churchwarden, overſeer of the poor, or any principal inha-" bitant of the pariſh, townſhip, or place, for which he ſhall " be ſo appointed ſurveyor, at the time of his appointment, or " within fourteen days after, give a bond upon paper, with-" out ſtamp thereupon, to ſome proper perſon within ſuch " pariſh, townſhip, or place, to be nominated by the ſaid " juſtices, with ſufficient ſurety, to account for the money " which ſhall come to his hands as ſurveyor, according to " the directions of this act; which bond ſhall be good and " effectual in law." The ſurveyor to give bond for the money he ſhall receive.

† *Sect.* 101. And by 13. Geo. 3. c. 78. ſ. 5. it is further enacted, " That if two parts out of three of thoſe ſo to be " aſſembled in any ſuch pariſh, townſhip, or place, for the " nomination of ſurveyors, ſhall agree in the choice of any " particular perſon of ſkill and experience to ſerve the ſaid " office, and in the ſettling of a certain ſalary for his trouble " therein, and ſhall return the name of ſuch perſon, toge-" ther with the liſt herein before directed, to the ſeſſions to " be held in the week next after the Michaelmas quarter " ſeſſions; the ſaid juſtices, if they ſhall think proper, may " appoint ſuch perſon to be ſurveyor for ſuch pariſh, town-" ſhip, or place, and allow him the ſalary mentioned in ſuch " agreement, which ſhall be raiſed and paid in the ſame " manner as the ſalary herein before mentioned is directed " to be raiſed and paid." How the juſtices ſhall appoint the ſurveyor elected by the inhabitants.

† *Sect.* 102. And by 13. Geo. 3. c. 78. ſ. 5. " In caſe any " ſurveyor to be appointed under the authority of this act " ſhall die, or become incapable of executing that office, be-" fore ſuch next ſpecial ſeſſions for appointing ſurveyors, the " ſaid juſtices, or any two of them, ſhall and may, at ſome " ſpecial ſeſſions, nominate and appoint ſuch perſon or per-" ſons as they ſhall think proper, to execute the ſaid office,

" until

" until ſuch next ſpecial ſeſſions for appointing ſurveyors as " aforeſaid; and if ſuch deceaſed ſurveyor had a ſalary, they " may allow the ſame ſalary to his ſucceſſor, in proportion " to the time he ſhall ſerve the ſaid office."

† *Sect.* 103. And by 13. Geo. 3. c. 78. ſ. 5. " If the ſaid " juſtices of the peace, at their ſaid ſpecial ſeſſions, or at any " time afterwards, purſuant to the powers of this act, ſhall " appoint more than one perſon for ſurveyor of any pariſh, " townſhip, or place, all and every perſon or perſons ſo ap- " pointed ſhall be comprehended under the word " *ſurveyor*" " in every part of this act."

Juſtices of cities, &c. only to allow ſuch ſalaries as ſhall be fixed by inhabitants.

† *Sect.* 104. But by 13. Geo. 3. c. 78. ſ. 55 it is provided, " That nothing in this act contained ſhall authoriſe or im- " power, or be deemed, conſtrued, or taken to authoriſe and " impower, any juſtice or juſtices of the peace, for any city, " town corporate, or borough, to fix or allow any ſalary to " or for any ſurveyor to be appointed by any ſuch juſtice or " juſtices, other than and except ſuch ſalary as ſhall be ſet- " tled and agreed upon by two parts out of three of the " perſons aſſembled in the pariſh, townſhip, or place, " within ſuch city, town corporate, or borough, for which " ſuch ſurveyor ſhall be appointed, purſuant to the direc- " tions of this act."

As to THE FIFTH GENERAL HEAD of this Chapter, *viz.* In what manner the ſurveyors of the highways ought to execute their office.

Duty of the aſſiſtant ſurveyor.

† *Sect.* 105. It is enacted by the ſame ſtatute of 13 Geo. 3. c. 78. ſ. 4. " That the aſſiſtant, ſo to be nominated and " appointed, ſhall aſſiſt the ſaid ſurveyor, whenever re- " queſted by him, in calling in and attending the per- " formance of the ſtatute-duty; in collecting the com- " poſitions, fines, penalties, and forfeitures; in making " and collecting the aſſeſſment; in making out and ſerv- " ing the notices authoriſed by this act; and in ſuch " other matters and things as ſhall be reaſonably required " of him by the ſurveyor, in the execution of his office " as ſurveyor, purſuant to this act: and the ſaid aſſiſtant " ſhall account with, and pay to, the ſurveyor, or to his " order, all the money which ſhall come to his hands as " aſſiſtant, by the means as aforeſaid; and in default " thereof, he ſhall forfeit double the value of the money by " him ſo received, and not ſo paid and accounted for; and " if the ſaid aſſiſtant ſhall wilfully neglect or make default " in the performance of any of the duty required from him " by this act, he ſhall forfeit, not exceeding five pounds, " nor

" nor leſs than forty ſhillings, at the diſcretion of the juſ-
" tice or juſtices of the limit within which ſuch aſſiſtant
" ſhall be appointed."

† *Sect.* 106. And by 13. Geo. 3. c. 78. ſ. 4. " The ſaid ſurveyor ſhall ſend orders, in writing, upon the ſaid aſſiſ-
" tant, for the payment of all ſums due to any perſon or per-
" ſons, for work or materials, which amount to forty ſhil-
" lings, or upwards; and the ſaid ſurveyor ſhall not be
" reſponſible for any ſum or ſums of money which ſhall be
" received by the ſaid aſſiſtant, and ſhall not be actually paid
" to ſuch ſurveyor, or to his order as aforeſaid." The ſurveyor may draw upon the aſſiſtant for ſums under 40s.

† *Sect.* 107. By 13. Geo. 3. c. 78. ſ. 12. it is further enacted, " That the ſurveyors ſhall, as they ſhall judge pro-
" per, view all the common highways, trunks, tunnels,
" plats, hedges, ditches, banks, bridges, cauſeways, and
" pavements, within the pariſh, townſhip, or place, for
" which they ſhall be appointed ſurveyors; and in caſe they
" ſhall obſerve any nuiſances, encroachments, obſtructions,
" or annoyances, made, committed, or permitted, in, upon,
" or to the prejudice of them, or any of them, contrary to
" the directions of this act, they ſhall give, or cauſe to be
" given, to any perſon or perſons, doing, committing, or
" permitting the ſame, perſonal notice, or notice in writing,
" to be left at his, her, or their uſual place or places of abode,
" ſpecifying the particulars wherein ſuch nuiſances, defaults,
" obſtructions, or annoyances, conſiſt; and if ſuch nui-
" ſances, obſtructions, or annoyances ſhall not be removed,
" and the ditches, drains, gutters, and water-courſes afore-
" ſaid effectually made, ſcoured, cleanſed, and opened, and
" ſuch trunks, tunnels, plats, and bridges, made and laid,
" and ſuch hedges properly cut and pruned, within twenty
" days after ſuch notice of the ſame reſpectively given as
" aforeſaid, then the ſaid ſurveyors ſhall remove ſuch nui-
" ſances, obſtructions, or annoyances, and open, cleanſe,
" and ſcour ſuch ditches, gutters, and water-courſes, and
" make or amend ſuch trunks, tunnels, plats, or bridges,
" and cut and prune ſuch hedges, for the benefit and im-
" provement of the ſaid highways; and the perſon or per-
" ſons ſo neglecting to make or open and cleanſe ſuch ditches,
" gutters, or water-courſes, or to cut or prune ſuch hedges,
" during the time aforeſaid, after ſuch notice given, ſhall
" forfeit, for every foot in length, which ſhall be ſo neg-
" lected, the ſum of one penny." Surveyors duty in view of highways, in reſpect to nuſances, &c.

Vide Salk. 357. where it was adjudged on the 22. Car. 2. c. 12. par. 12. that the juſtices ought to fix the particular days, and not generally appoint the time between ſuch a day and ſuch a day.

† *Sect.* 108. And by 13. Geo. 3. c. 78. ſ. 12. " The ſaid ſurveyors ſhall be reimburſed what charges and expences
" they ſhall be at in removing ſuch nuiſances, obſtructions,
" or The ſurveyor ſhall be repaid his charges for removing nuſances.

" or annoyances, and making or opening, cleanſing and " ſcouring, ſuch ditches, gutters, and water-courſes, and in " making or amending ſuch trunks, tunnels, plats, or " bridges, and in cutting and pruning ſuch hedges reſpec- " tively, by the perſon or perſons who ought to have done " the ſame, over and above the ſaid forfeiture."

And if the party refuſe to pay, the money may be aſſeſſed and levied.

† *Sect.* 109. And by 13. Geo. 3. c. 78. ſ. 12. " In caſe ſuch " perſon or perſons ſhall, upon demand, refuſe or neglect to " pay the ſaid ſurveyor his charges and expences occaſioned " thereby reſpectively, and alſo the ſaid forfeiture of one " penny *per* foot, then the ſaid ſurveyor ſhall apply to any " juſtice of the peace, and, upon making oath before him of " notice being given to the defaulter in manner aforeſaid, and " of the ſaid work being done by ſuch ſurveyor, and of the " expences attending the ſame, the ſaid ſurveyor ſhall be re- " paid by ſuch perſon or perſons all ſuch his ſaid charges as " ſhall be allowed to be reaſonable by the ſaid juſtice; or, in " default of payment thereof on demand, the ſame ſhall be " levied in ſuch manner as the penalties and forfeitures " hereby inflicted are directed to be levied."

How highways by tenure, &c. may be ordered to be repaired.

† *Sect.* 110. And by 13. Geo. 3. c. 78. ſ. 23. it is further enacted, " That every ſurveyor ſhall give information upon " oath to the ſaid juſtices, or any two or more of them, of " all ſuch highways, and of all bridges, cauſeways, or pave- " ments, upon ſuch highways, as are out of repair, and " ought to be repaired by any perſon or perſons, bodies po- " litic or corporate, by reaſon of any grant, tenure, limita- " tion, or appointment, of any charitable gift, or otherwiſe " howſoever; and the ſaid juſtices ſhall limit a time for re- " pairing the ſame, of which notice ſhall be given by the ſaid " ſurveyor to the occupier or occupiers of the lands and te- " nements liable to the burthen of ſuch repairs, or to ſuch " other perſon or perſons, bodies politic or corporate, as " are chargeable with the ſame; and if ſuch repairs ſhall " not be effectually made within the time ſo limited, the ſaid " juſtices ſhall, and are hereby required to preſent ſuch high- " ways, bridges, cauſeways, or pavements ſo out of repair, " together with the perſon or perſons, bodies politic or " corporate, liable to repair the ſame, at the next general " quarter ſeſſions of the peace for the limit wherein ſuch " highway ſhall lie; and the juſtices at ſuch quarter ſeſſions " may, if they ſee juſt cauſe, direct the proſecution to be " carried on at the general expence of ſuch limit, and to be " paid out of the general rates within the ſame."

Vide 1. Black. 602.

† *Sect.*

† *Sect.* 111. And by 13. Geo. 3. c. 78. ſ. 25. it is further enacted, "That the ſaid juſtices, at any ſpecial ſeſſions to be "held by virtue of this act, may, by writing under their hands "and ſeals, order and appoint thoſe highways (not being "*turnpike road*), which in their opinion do moſt want repair "within their juriſdiction, to be firſt amended, and at what "time, and in what manner, the ſame ſhall be amended; "according to which order, if ſuch there be, all and ſingular the reſpective ſurveyors of the ſaid highways are "hereby required to proceed within their reſpective liberties." Juſtices may order which highways ſhall be firſt repaired.

† *Sect.* 112. And by 13. Geo. 3. c. 78. ſ. 26. for the better convenience of travellers where ſeveral highways meet, it is further enacted, "That the ſaid juſtices, at ſome ſpecial "ſeſſions to be held for the purpoſes of this act, ſhall iſſue "their precept to the ſurveyor of the highways for any pa-"riſh, townſhip, or place, where ſeveral highways meet, "and there is no proper or ſufficient direction poſt or ſtone, "already fixed or erected, requiring him forthwith to cauſe "to be erected or fixed, in the moſt convenient place where "ſuch ways meet, a ſtone or poſt, with inſcriptions thereon, "in large legible letters, painted on each ſide thereof, con-"taining the name or names of the next market town or "towns, or other conſiderable place or places, to which the "ſaid highways reſpectively lead; and alſo at the ſeveral ap-"proaches or entrances to ſuch parts of any highways as are "ſubject to deep or dangerous floods, graduated ſtones or "poſts, denoting the depth of water in the deepeſt part of "the ſame, and likewiſe ſuch direction poſts or ſtones, as "the ſaid juſtices ſhall judge to be neceſſary, for the guiding "of travellers in the beſt and ſafeſt track through the ſaid "floods or waters; and the ſaid ſurveyor ſhall be reimburſed "the expences of providing and erecting the ſame reſpec-"tively out of the monies which ſhall be received by him or "them, purſuant to the directions of this act; and in caſe "any ſurveyor ſhall, by the ſpace of three months after ſuch "precept to him directed and delivered, neglect or refuſe "to cauſe ſuch ſtones or poſts to be fixed, as aforeſaid, every "ſuch offender ſhall forfeit the ſum of twenty ſhillings." Direction-poſts where and how to be erected.

† *Sect.* 113. And by 13. Geo. 3. c. 78. ſ. 27. for the better repairing, and keeping in repair, the ſaid highways, and providing of materials for that purpoſe, it is enacted, "That "it ſhall and may be lawful to and for every ſurveyor, to be "appointed as aforeſaid, to take and carry away, or cauſe "to be taken and carried away, ſo much of the rubbiſh, or "refuſe-ſtones of any quarry or quarries, lying and being "within the pariſh, townſhip, or place, where he ſhall be "ſurveyor Materials where and in what manner to be taken.

" ſurveyor (except ſuch as ſhall have been got by the ſur-
" veyor of any turnpike road), without the licence of the
" owner or owners of ſuch quarries, as they ſhall judge ne-
" ceſſary for the amendment of the ſaid highways, but not
" to dig or get ſtone in ſuch quarry without leave of the
" owner thereof."

The ſurveyors may dig gravel, chalk, &c. in the waſte lands and brooks of the pariſh, making ſatisfaction for damages done in taking them away.

† *Sect.* 114. And by 13. Geo. 3. c. 78. ſ. 27. it is alſo enacted," That it ſhall and may be lawful for every ſuch ſur-
" veyor, for the uſe aforeſaid, in any waſte land or common
" ground, river or brook, within the pariſh, townſhip, or
" place, for which he ſhall be ſurveyor, or within any other
" pariſh, townſhip, or place, wherein gravel, ſand, chalk,
" ſtone, or other materials, are reſpectively likely to be found
" (in caſe ſufficient cannot be conveniently had within the
" pariſh, townſhip, or place, where the ſame are to be em-
" ployed, and ſufficient ſhall be left for the uſe of the roads
" in ſuch other pariſh, townſhip, or place), to ſearch for,
" dig, get, and carry away the ſame, ſo that the ſaid ſurveyor
" doth not thereby divert or interrupt the courſe of ſuch ri-
" ver or brook, or prejudice or damage any building, high-
" way, or ford, nor dig or get the ſame out of any river or
" brook within the diſtance of one hundred feet above or
" below any bridge, nor within the like diſtance of any dam
" or wear; and likewiſe to gather ſtones lying upon any
" lands or grounds within the pariſh, townſhip, or place,
" where ſuch highway ſhall be, for ſuch ſervice and pur-
" poſe, and to take and carry away ſo much of the ſaid ma-
" terials as by the diſcretion of the ſaid ſurveyor ſhall be
" thought neceſſary to be employed in the amendment of
" the ſaid highways, without making any ſatisfaction for the
" ſaid materials; but ſatisfaction ſhall be made for all da-
" mages done to the lands or grounds of any perſon or per-
" ſons, by carrying away the ſame, in the manner herein
" after directed, for getting and carrying materials in in-
" cloſed grounds; but no ſuch ſtones ſhall be gathered with-
" out the conſent of the occupier of ſuch lands or grounds,
" or a licence from a juſtice of peace for that purpoſe, after
" having ſummoned ſuch occupier to come before him, and
" heard his reaſons, if he ſhall appear and give any, for re-
" fuſing his conſent."

Not to extend to ſtones thrown up by the ſea, called Beach.

† *Sect.* 115. But by 13. Geo. 3. c. 78. ſ. 28. it is provided,
" That nothing in this act contained, relative to the gather-
" ing or getting of ſtones, ſhall extend to any quantity of
" land (being private property), covered with ſtones thrown
" up by the ſea, commonly called *beach*."

† *Sect.*

† *Sect.* 116. And by 13. Geo. 3. c. 78. ſ. 29. it is further enacted, "That every ſuch ſurveyor, for the uſe aforeſaid, "may ſearch for, dig, and get ſand, gravel, chalk, ſtone, "or other materials, if ſufficient cannot conveniently be had "within ſuch waſte lands, common grounds, rivers, or "brooks, in and through any of the ſeveral or incloſed lands "or grounds of any perſon or perſons whomſoever, within "the pariſh, townſhip, or place, where the ſame ſhall be "wanted, or by licence from two juſtices of the peace, at "a ſpecial ſeſſions, within any other pariſh, townſhip, or "place, adjoining or lying near to the highway for which "ſuch materials ſhall be required, if it ſhall appear to ſuch "juſtices that ſufficient materials cannot be conveniently "had in the pariſh, townſhip, or place, where ſuch high-"ways lie, or in the waſte lands or common grounds, ri-"vers or brooks, of ſuch adjacent pariſh, townſhip, or place, "and that a ſufficient quantity of materials will be left for "the uſe of the pariſh, townſhip, or place, where the ſame "ſhall be (ſuch lands or grounds not being a garden, yard, "avenue to a houſe, lawn, park, paddock, or incloſed plan-"tation), and to take and carry away ſo much of the ſaid "materials as by the diſcretion of the ſaid ſurveyor ſhall be "thought neceſſary to be employed in the amendment of the "ſaid highways; the ſaid ſurveyor making ſuch ſatisfaction "for the damage to be done to ſuch lands or grounds by "the getting and carrying away the ſame, as ſhall be agreed "upon between him and the owner, occupier, or other "perſon intereſted in ſuch lands or grounds reſpectively, in "the preſence, and with the approbation of two or more "ſubſtantial inhabitants of ſuch pariſh, townſhip, or place; "and in caſe they cannot agree, then ſuch ſatisfaction and "recompence ſhall be ſettled and aſcertained by order of one "or more juſtice or juſtices of the peace of the limit where "ſuch land or ground ſhall lie."

If ſufficient materials cannot be found in waſte lands, &c. the ſurveyor may take them from ſeveral or incloſed lands or grounds in the pariſh, or in any pariſh near the highway, with the licence of two juſtices at ſpecial ſeſſions, making ſatisfaction to the owners.

† *Sect.* 117. And by 13. Geo. 3. c. 78. ſ. 29. "In ſuch "places where, from the want of other materials, burnt "clay may be ſubſtituted in the place thereof, it ſhall and "may be lawful for the ſurveyor to dig clay in ſuch places "as he is hereby authoriſed to dig chalk or gravel, and to "dry the ſame upon the lands adjoining, and to burn the "ſame upon any waſte lands or common grounds, and to "carry ſuch clay in ſuch manner as other materials are al-"lowed to be carried by this act, upon making ſuch ſatis-"faction for the damages within the ſeveral incloſed lands "or grounds where ſuch clay ſhall be placed or carried, as "herein directed with regard to other materials."

Clay may be got and burnt into materials for repairing the highways.

Sect.

But if the owner of the inclosed land want the materials, he must give notice to the surveyor.

† *Sect.* 118. But by 13. Geo. 3. c. 78. ſ. 29. it is provided, "That when the owner of any ſuch incloſed lands ſhall have occaſion for any ſuch materials lying within the ſame for the repair of any highway, or other roads or ways upon his eſtate, or which he ſhall be under obligation to repair, and ſhall give notice to ſuch ſurveyor that he apprehends there will not be ſufficient for thoſe purpoſes, and alſo for the uſe of the public highways; then, and in every ſuch caſe, the ſurveyor ſhall not be permitted to dig or take ſuch materials without the conſent of ſuch owner, or an order of two juſtices of the peace, after having ſummoned and heard the ſaid owner or occupier, or his ſteward or agent; which juſtices are hereby authoriſed to enquire into the nature and circumſtances of the caſe, and to permit or reſtrain ſuch power, in ſuch manner, and under ſuch directions, as to them ſhall ſeem juſt."

It hath been adjudged upon this clauſe of the ſtatute,

Rex v. Manning, 1. Burr. 382.

† *Sect.* 119. FIRST, That an order of ſeſſions muſt ſhew that there were no proper materials to be found in or upon the waſtes or common grounds near the highway; for the ſurveyors are not warranted to dig in the private ſoil for all the ſpecies of materials, becauſe *ſome* of theſe ſpecies are not to be found in or upon the ſaid waſtes or common ground; and that it ought to ſpecify what cannot be found in or upon the waſtes or common grounds, and what may be found in the private ſoil, and that they muſt previouſly know that it is to be found there; or at leaſt have a reaſonable proſpect of finding it there, for that they cannot dig to try for it in the private ſoil.

1 Burr. 382.

† *Sect.* 120. SECONDLY, That an order of ſeſſions to dig generally is bad; for they muſt fix upon a particular part, and not leave it to the diſcretion of the ſurveyor.

1. Burr. 382.

† *Sect.* 121. THIRDLY, That ſatisfaction muſt be awarded to the owner, or to the occupier or to both, according to the damages ſuſtained by the one, or by the other, or by both.

† *Sect.* 122. FOURTHLY, That notice to the occupier is ſufficient, and it is ſufficient to ſtate, that it was left at his place of abode.

If pits or holes are made in getting materials, the ſurveyor ſhall cauſe them to be filled up or fenced off.

† *Sect.* 123. Alſo by 13. Geo. 3. c. 78. ſ. 31. it is enacted, "That if any ſurveyor, or perſon employed by him, ſhall, by reaſon of the ſearching for, digging, or getting any gravel, ſand, ſtones, chalk, clay, or other materials for repairing any highways, make, or cauſe to be made, any pit or hole in any ſuch lands or grounds, rivers or brooks,

" as

" as aforeſaid, wherein ſuch materials ſhall be found, ſuch " ſurveyor, perſon or perſons, ſhall forthwith cauſe the ſame " to be ſufficiently fenced off, and ſuch fence ſupported " and repaired, during ſuch time as the ſaid pit or hole ſhall " continue open, and ſhall, within three days after ſuch pit " or hole ſhall be opened or made, where no gravel, ſtones, " or materials, ſhall be found, cauſe the ſame to be forth- " with filled up, levelled, and covered with the turf or clod " which was dug out of the ſame; and where any ſuch ma- " terials ſhall be found, within fourteen days after having " dug up ſufficient materials in ſuch pit or hole, cauſe the " ſame to be filled up, ſloped down, or fenced off, and ſo " continued."

† *Sect.* 124. And by 13. Geo. 3 c. 78. ſ. 31. " Every ſur- " veyor ſhall, within twenty days after he ſhall be appointed " to that office, cauſe all the ſaid pits and holes which ſhall " then be open, and not likely to be further uſeful, to be " filled up or ſloped down, in manner aforeſaid; and if they " are likely to be further uſeful, he ſhall ſecure the ſame by " poſts and rails, or other fences to prevent accidents to " perſons or cattle."

† *Sect.* 125. And by 13. Geo. 3. c. 78. ſ. 31. " In caſe " ſuch ſurveyor, perſon or perſons, ſhall neglect to fill " up, ſlope down, or fence off, ſuch pit or hole, in man- " ner and within the time aforeſaid, he or they ſhall forfeit " the ſum of ten ſhillings for every ſuch default." or forfeit 10s. for every neglect:

† *Sect.* 126. And by 13. Geo. 3. c. 78. ſ. 31. " In caſe " ſuch ſurveyor, perſon or perſons, ſhall neglect to fence " off ſuch pit or hole, or to ſlope down the ſame, as herein- " before directed, for the ſpace of ſix days after he or they " ſhall have received notice for either of thoſe purpoſes " from any juſtice of the peace, or from the owner or oc- " cupier of ſuch ſeveral ground, river, or brook, or any " perſon having right of common within ſuch common or " waſte lands, as aforeſaid, and ſuch neglect and notice " ſhall be proved upon oath before one or more of the ſaid " juſtices of the peace, ſuch ſurveyor, perſon or perſons, " ſhall forfeit and pay any ſum not exceeding ten pounds, " nor leſs than forty ſhillings, for every ſuch neglect; to " be determined and adjudged by ſuch juſtice or juſtices, " and to be laid out and applied in the fencing off, filling " up, or ſloping down, ſuch pit or hole, and toward the " repair of the roads in the pariſh, townſhip, or place, " where the offence ſhall be committed, in ſuch manner as " the ſaid juſtice or juſtices ſhall direct and appoint; " which forfeiture, in caſe the ſame be not forthwith and for every neglect after notice, a ſum not exceeding 10l. nor leſs than 40s.

" paid, ſhall be levied as other forfeitures are herein-after " directed to be levied."

How materials for another pariſh ſhall be removed.

† *Sect.* 127. But by 13. Geo. 3. c. 78. ſ. 32. it is provided, " That no ſtone, gravel, or materials, to be dug for the " uſe of any other pariſh, townſhip, or place, than that " wherein the ſame are found, ſhall be removed or carried " from the place where they ſhall be ſo dug at any other " time than between the firſt day of *April* and the firſt day " of *November*, or in the time of hard froſt in the winter " ſeaſon."

Damaging mills, &c.

† *Sect.* 128. And by 13. Geo. 3. c. 78. ſ. 33. it is further enacted, " That if any perſon ſhall dig, or cauſe to be dug, " materials for the highways, contrary to the direction of " this act, whereby any bridge, mill, building, dam, high- " way, ford, mines, or tin-works, may be damaged or en- " dangered; every offender therein ſhall forfeit, for every " ſuch offence, any ſum not exceeding five pounds, nor leſs " than twenty ſhillings, at the diſcretion of the court or " juſtices before whom complaint thereof ſhall be made."

The ſurveyor's duty is to keep books, and enter the accounts of all money paid and received;

† *Sect.* 129. By 13. Geo. 3. c. 78. ſ. 48. it is enacted, " That the ſurveyor ſhall collect the ſeveral aſſeſſments, for- " feitures, penalties, ſums of money, and compoſitions, to " be received and taken by virtue of this act, within the " year for which he is appointed ſurveyor, and ſhall keep " one or more book or books, in which he ſhall fairly " enter a juſt, true, and fair account of all ſuch money " as ſhall have come to his hands, or to the hands of the " ſaid aſſiſtant, and to whom, and on what occaſion, he

and alſo of all money remaining due:

" ſhall have paid or applied the ſame; and ſhall alſo enter " in ſuch book or books a liſt or liſts of all ſuch ſums of " money as ſhall then remain due and owing from any per- " ſon or perſons, in reſpect of the payments, compoſitions, " aſſeſſments, penalties, or forfeitures, to be collected, re- " ceived, or taken, for and in reſpect of the ſaid highways,

Alſo of all tools, materials, &c.

" by virtue of this act; and the ſaid ſurveyor ſhall alſo " enter an account of all tools, materials, implements, and " other things provided, by order of the inhabitants, at a " veſtry, or other public meeting, for the repair of the ſaid " highways, at the public expence of ſuch pariſh, townſhip,

and ſhall produce his accounts at a veſtry meeting;

" or place; and ſhall produce ſuch books, and the aſſeſſ- " ments made within that year, unto the inhabitants to which " they belong, at a veſtry or other public meeting to be " held for that purpoſe, within fifteen days before the ſaid " ſpecial ſeſſions ſo to be held in the week next after *Mi-* " *chaelmas* quarter ſeſſions, as aforeſaid, to the intent that

" the

" the ſaid accounts, aſſeſſments, and liſts, may be inſpected " by the inhabitants."

† *Sect.* 130. And by 13. Geo. 3. c. 78. ſ. 48. " Every " ſuch ſurveyor ſhall, after the ſaid books and aſſeſſments " ſhall have been produced at ſuch meeting, take the ſame to " ſuch juſtice of the peace for the limit wherein ſuch pariſh, " townſhip, or place, doth lie, and on ſuch day, and at ſuch " hour, as ſhall be agreed upon at ſuch meeting, ſome day " after the ſaid meeting of the inhabitants, and before ſuch " laſt-mentioned ſpecial ſeſſions, and then and there verify " ſuch account, or any part thereof, upon oath, if required." and afterwards before a juſtice of peace, who may allow them:

† *Sect.* 131. And by 13. Geo. 3. c. 78. ſ. 48. " Such juſ- " tice may allow ſuch account if he finds it juſt, or poſt- " pone it until ſuch ſpecial ſeſſions, if he finds cauſe for ſo " doing; in which caſe it may be ſettled and allowed at ſuch " ſpecial ſeſſions, after the parts objected to by ſuch juſtice " ſhall have been explained and verified by proper evidence, " to the ſatisfaction of the juſtices at ſuch ſpecial ſeſſions; " and in caſe any articles contained in ſuch accounts ſhall " not be explained and proved to the ſatisfaction of ſuch " juſtices, they may diſallow the ſame; and whenever the " ſaid accounts ſhall be ſo ſettled and allowed, or diſallow- " ed, as aforeſaid, all ſuch books and aſſeſſments ſhall be " tranſmitted to the churchwarden or overſeer of the poor " for ſuch pariſh, townſhip, or place, reſpectively, or, if " the place be extraparochial, then to ſome principal inha- " bitant thereof, to be kept for the uſe of ſuch pariſh, " townſhip, or place." or they may be further examined and allowed, or diſallowed, at the ſpecial ſeſſions.

† *Sect.* 132. The general quarter ſeſſions have no origi- nal juriſdiction reſpecting the paſſing the ſurveyor's account, and paying over the balances to the ſucceſſor. Therefore, where an order for this purpoſe was made at the general quarter ſeſſions, even by the conſent of the ſpecial ſeſſion it was quaſhed; for conſent cannot give original juriſdiction to a court that has only an appellate juriſdiction. 2. Burr. 746.

† *Sect.* 133. And by 13. Geo. 3. c. 78. ſ. 48. " The ſaid " ſurveyor ſhall forthwith deliver a duplicate of ſuch book " and account, together with all ſums of money as ſhall " remain in his hands, and likewiſe all tools, materials, " implements, and other things, as aforeſaid, to the ſuc- " ceeding ſurveyor for ſuch pariſh, townſhip, or place, in " caſe any new ſurveyor ſhall be appointed, or retain the " ſame in his hands, and account for them in his next ac- " count, if he ſhall be continued ſurveyor for ſuch pariſh, Books materials, tools, &c. to be delivered to the ſucceeding ſurveyor. New ſurveyor authoriſed to collect the arrears, &c.

" tounſhip, or place, in the ſucceeding year; and the ſuc-
" ceeding ſurveyor is hereby required to recover, collect,
" and receive all ſuch ſums of money which ſhall be due
" and owing as aforeſaid, by all ſuch ways and means, as
" fully and effectually, to all intents and purpoſes, as the
" preceding ſurveyor could, might, or ought to have reco-
" vered, collected, or received the ſame."

The ſurveyor liable to forfeitures for neglect of duty.

† *Sect.* 134. And by 13. Geo. 3. c. 78. ſ 48. " In caſe
" ſuch ſurveyor ſhall neglect to provide ſuch book or books,
" or to enter ſuch reſpective accounts and liſts therein, or
" to deliver the ſaid book or books, and ſuch duplicate
" thereof, and ſuch aſſeſſments, tools, materials, implements,
" and other things, in manner aforeſaid, he ſhall, for every
" ſuch offence, forfeit not exceeding five pounds, nor leſs
" than forty ſhillings."

† *Sect.* 135. And by 13. Geo. 3. c. 78. ſ. 48. " In caſe
" he ſhall make default in the paying or accounting for the
" money ſo remaining in his hands, within the time, and
" according to the directions aforeſaid, he ſhall forfeit dou-
" ble the value of the money which ſhall be adjudged by the
" ſaid juſtices to be in his hands."

If ſurveyor dies, his executors, &c. ſhall account in the ſame manner.

† *Sect.* 136. And by 13. Geo. 3. c. 78. ſ. 48. " In caſe
" any ſuch ſurveyor ſhall die before ſuch reſpective ac-
" counts and liſts ſhall be made out, or ſuch monies, books,
" aſſeſſments, tools, materials, and implements, ſhall be ſo
" delivered and paid, the executors or adminiſtrators of
" ſuch ſurveyor ſhall make out, pay, and deliver the ſame,
" in like manner, and under the like penalty, as ſuch ſur-
" veyor is hereby required and made ſubject and liable to."

Fees to be paid to the juſtices clerks.

† *Sect.* 137. And by 13. Geo. 3. c. 78. ſ. 48. " Every
" ſurveyor ſhall pay to the juſtices clerks, for the appoint-
" ment and charge, the ſum of one ſhilling; for the bond,
" ſixpence; and for the account ſo to be examined and
" taken, and for the oath ſo to be adminiſtered, the ſum of
" one ſhilling, and no more; and if any perſon or perſons
" ſhall receive any greater ſum or fee for the buſineſs afore-
" ſaid than herein-before mentioned, he ſhall forfeit the
" ſum of ten pounds for every offence."

How materials may be contracted for.

† *Sect.* 138. By 13. Geo. 3. c. 78. ſ. 50. it is alſo enacted,
" That where a ſufficient quantity of ſtone, gravel, chalk,
" or other materials, cannot be provided and carried by
" the labourers and teams required by this act to perform
" ſtatute duty, the ſurveyor ſhall contract for the getting
" and carrying thereof, (in the preſence of the ſaid aſſiſtant,

" if

" if any ſuch ſhall be appointed), at a meeting to be held " for that purpoſe, of which ten days notice in writing " ſhall be given, by fixing the ſame upon the door of the " church or chapel of the pariſh, townſhip, or place, or " if there be no church or chapel, at the moſt public place " there; which notice ſhall ſpecify the work to be done, " and the time and place for letting thereof."

† *Sect.* 139. And by 13. Geo. 3. c. 78. ſ. 50. " If any ſur- " veyor ſhall have any part, ſhare, or intereſt, directly or " indirectly, in any ſuch contract, or in any other contract " or bargain for work or materials to be made, done, or " provided, upon, for, or on account of any of the high- " ways, roads, bridges, or other works whatſoever, under " his care or management, or ſhall, upon his own account, " directly or indirectly, let to hire any team, or ſell or diſ- " poſe of any timber, ſtone, or other materials, to be uſed " or employed in making or repairing ſuch roads, bridges, " or other works, as aforeſaid (unleſs a licence, in writ- " ing, for the ſale of any ſuch materials, or to let to hire " any ſuch team, be firſt obtained from ſome juſtice of the " peace within that limit), he ſhall forfeit, for every ſuch " offence, the ſum of ten pounds, and be for ever after in- " capable of being employed as a ſurveyor with a ſalary, " under the authority of this act."

† *Sect.* 140. And by 13. Geo. 3. c. 78. ſ. 51. it is further enacted, " That if any ſurveyor of the highways, after his " acceptance of the ſaid office, ſhall neglect his duty in any " thing required of him by this act, for which no particu- " lar penalty is impoſed, he ſhall forfeit, for every ſuch " offence, any ſum not exceeding five pounds, nor leſs " than ten ſhillings, at the diſcretion of the juſtice or juſ- " tices having juriſdiction therein." Penalty upon the ſurveyor.

† *Sect.* 141. Alſo by 13. Geo. 3. c. 78 ſ. 54. " The juſ- " tices of the peace of all cities, corporations, boroughs, " or other places, are hereby required to put in execution " every part of this act within their reſpective juriſdic- " tions." Juſtices of cities to put the act in execution.

† *Sect.* 142. And by 13. Geo. 3. c. 78. ſ. 44. it is recited, " That whereas, by ſeveral acts of parliament concerning turnpike roads (5), a certain part of the duty called ſtatute duty is or may be directed to be performed on ſuch roads, and it may happen in ſome places, that the ſeveral perſons liable thereto may have compounded for the ſame," it is therefore further enacted, " That in all ſuch " caſes, the ſurveyor of highways, where ſuch compoſition- Where the ſurveyor receives money due to the turnpike roads, he ſhall pay it to the treaſurer.

(5) Vide the end of this chapter.

" ſhall have been made, ſhall pay to the treaſurer or ſur-
" veyor of ſuch turnpike roads a certain part of the com-
" poſition-money ſo received, to be proportioned accord-
" ing to the number of days duty which ſuch perſon or
" perſons was or were liable to perform on ſuch turn-
" pike road; which money ſhall be laid out and expended
" on ſuch part of the ſaid turnpike road as lies within the
" pariſh, townſhip, or place, from which it was received,
" and not elſewhere."

How the ſame ſhall be applied.

† *Sect.* 143. And by 13. Geo. 3. c. 78. ſ. 44. " If ſuch
" ſurveyor of the highways ſhall refuſe or neglect to pay
" to the treaſurer or ſurveyor of ſuch turnpike road ſuch
" part of the ſaid compoſition-money ſo received by him,
" within twenty days after he ſhall have received the ſame,
" upon demand made by ſuch treaſurer or ſurveyor, the
" ſame ſhall and may be levied on the goods and chattels of
" ſuch ſurveyor, in ſuch manner as penalties and forfeitures
" are by this act authoriſed to be levied."

As to THE SIXTH GENERAL HEAD of this chapter, *viz.* What ſhall be ſaid to be a nuſance to the highway, I ſhall conſider:

1. What ſhall be ſaid to be ſuch a nuſance at common law.

2. What by ſtatute.

As to THE FIRST POINT, *viz.* What ſhall be ſaid to be a nuſance to a highway at common law.

Kitch. 34, 35.

Sect. 144. There is no doubt but that all injuries whatſoever to any highway, as by digging a ditch, or making a hedge overthwart it, or laying logs of timber in it, or by doing any other act which will render it leſs commodious to the king's people, are public nuſances at common law.

2. R. Abr. 137. 265.

Sect. 145. Alſo it ſeemeth to be clear, that it is no excuſe for one who layeth ſuch logs in the highway that he laid them only here and there, ſo that the people might have a paſſage by windings and turnings through the logs;

2. R. Abr. 137.

yet it is ſaid to be no nuſance for the inhabitants of a town to unlade billets, &c. in the ſtreet before their houſes, by reaſon of the neceſſity of the caſe, unleſs they ſuffer them to continue there an unreaſonable time after they are unloaded.

Sect.

Sect. 146. There is no doubt but that it is a nuſance at common law to erect a new gate in a highway, as has been more fully ſhewn in the precedent chapter. 8. H. 7. 5. Kitch. 34, 35. 8. H. 7. 5.

Sect. 147. Alſo it ſeemeth clear, that it is a like nuſance to ſuffer the ditches adjoining to a highway to be foul, by reaſon whereof it is impaired, or to ſuffer the boughs of trees growing near the highway to hang over the road, in ſuch a manner as thereby to incommode the paſſage.

As to THE SECOND POINT, *viz.* What ſhall be ſaid to be a nuſance to the highway by ſtatute.

Sect. 148. Not only all the abovementioned nuſances, which are ſuch at common law, are eſteemed alſo nuſances by ſtatute, but there is alſo one particular nuſance which is made ſuch by ſtatute, and doth not ſeem to be taken notice of by common law, and that is the drawing of a travelling carriage with more than ſix horſes in length, (*a*) the permitting whereof hath occaſioned the carrying of ſuch exceſſive loads in ſuch carriage, that the weight thereof hath in many places rendered the roads unpaſſable.

(*a*) For the number now permitted to be drawn, vide infra, ſect. 165.

As to THE SEVENTH GENERAL HEAD of this chapter, *viz.* How ſuch nuſances are to be removed and puniſhed, I ſhall conſider the following particulars:

1. In what order hedges and ditches, adjoining to the highway, ought to be kept.

2. How far all trees and buſhes are to be removed from the highway.

3. In what manner all other annoyances obſtructing the highway are to be removed.

4. How far all perſons are puniſhable for taking away things made uſe of for the benefit of the highway.

5. How far they may be puniſhed for drawing a carriage with more than five horſes in length.

6. How far drivers of carriages are puniſhable for miſbehaviour.

As to the first particular, *viz.* In what order hedges and ditches, adjoining to the highway, ought to be kept.

3. Hen. 7. 5. Kitch. 34, 35. Dalton, c. 26. 144. Summary 144.

Sect. 149. It is said, that he who hath lands next adjoining to the highway, is bound of common right to scour his ditches; but it is said, that he who hath lands next adjoining to such lands, is not bound by the common law so to do, without some special prescription for that purpose; and perhaps it is the better opinion, that he who hath trees next adjoining to the highway, and hanging over it to the annoyance of the people, is bound by the common law to lop the same: and it seems clear, that any person may justify the lopping such trees, so far as to avoid the nusance.

Trees adjoining to highways, by whom and in what manner to be cut and pruned.

† *Sect.* 150. By 13. Geo. 3. c. 78. s. 7. however it is enacted, "That the possessors of the land next adjoining to every highway shall cut, prune, and plash their hedges, and also cut down or prune and lop the trees growing in or near such hedges or other fences, (except those trees planted for ornament or shelter, as hereafter mentioned) in such manner that the highways shall not be prejudiced by the shade thereof respectively, and that the sun and wind may not be excluded from such highway to the damage thereof, within ten days after notice given by the surveyor for that purpose, or the surveyor shall make complaint thereof to some justice of the limit, who shall summon the possessor of the said lands to some special sessions, to answer to the said complaint; and if it shall appear to the justices that such possessor had not complied with the requisites of this act, the said justices, upon hearing the surveyor and the possessor of such land, or his agent, (or in default of his appearance, upon having due proof of the service of such summons), and considering the circumstances of the case, may order such hedges to be cut, plashed, and pruned, and such trees to be cut down, or pruned in such manner, as may best answer the purposes aforesaid; and if the possessor of such lands shall not obey such order within ten days after due notice thereof, he shall forfeit two shillings for every twenty-four feet in length of such hedge which shall be so neglected to be cut and plashed, and two shillings for every tree which shall be so neglected to be cut down or pruned, and lopped."

On default the surveyor may prune, &c. at the cost of the defaulter.

† *Sect.* 151. And by 13. Geo. 3. c. 78. s. 7. "The surveyor, in case of such default, shall cut, prune, and plash such hedges, and cut down or prune and lop such trees, in the manner directed by such order; and such possessor shall

" ſhall be charged with, and pay, over and above the ſaid " penalties, the charges and expences of doing the ſame; " or, in default thereof, ſuch charges and expences ſhall be " levied, together with the ſaid forfeitures, upon his or " her goods and chattels, by warrant from a juſtice of peace, " in ſuch manner as is authoriſed for forfeitures incurred " by virtue of this act."

Occupiers to make drains and ditches, &c.

† *Sect.* 152. And by 13. Geo. 3. c. 78. ſ. 8. it is further enacted, " That ditches, drains, or watercourſes, of a ſuf- " ficient depth and breadth, for the keeping all highways " dry, and conveying the water from the ſame, ſhall be " made, ſcoured, cleanſed, and kept open, and ſufficient " trunks, tunnels, plats, or bridges, ſhall be made and " laid where any cartways, horſeways, or footways, lead " out of the ſaid highways into the lands or grounds ad- " joining thereto, by the occupier of ſuch lands or grounds; " and every perſon who ſhall occupy any lands or grounds " adjoining to, or lying near ſuch highway through which " the water hath uſed to paſs from the ſaid highway, ſhall " open, cleanſe, and ſcour the ditches, watercourſes, or " drains, for ſuch water to paſs without obſtruction; and " that every perſon making default, after ten days notice " by the ſurveyor, ſhall forfeit ten ſhillings."

Where the old ditches &c. are not ſufficient, new ones are to be made.

† *Sect.* 153. And by 13. Geo. 3. c. 78. ſ. 14. it is further enacted, " That where the ditches, gutters, or water- " courſes, ſhall not be ſufficient to carry off the water which " ſhall lie upon and annoy the highways, the ſurveyors, by " the order of any one of the ſaid juſtices, ſhall make new " ditches and drains in and through the lands and grounds " adjoining or lying near to ſuch highways, or in and " through any other lands or grounds, if it ſhall be ne- " ceſſary, for the more eaſy and effectually carrying off " ſuch water from the ſaid highways, and alſo to keep ſuch " ditches, gutters, or watercourſes, ſcoured, cleanſed, and " opened; and the ſurveyors, and their workmen, are au- " thoriſed to go upon the lands, for the purpoſes afore- " ſaid."

Surveyors to make trunks, &c.

† *Sect.* 154. And by 13. Geo. 3. c. 78. ſ. 14. " The " ſurveyors ſhall make proper trunks, tunnels, plats, bridges, " or arches, over ſuch ditches, gutters, or watercourſes, for " the convenient uſe and enjoyment of the lands or grounds " through which the ſame ſhall be made, and keep the " ſame in repair, and make ſatisfaction to the owner or " occupier of ſuch lands which are not waſte or common, " for the damages ſuſtained thereby; to be ſettled and paid " in ſuch manner as the damages for getting materials in

" ſeveral

" ſeveral or incloſed lands or grounds are hereafter directed " to be ſettled and paid."

As to the ſecond particular, *viz.* How far all trees and buſhes are to be removed from the highway.

No tree, buſh, or ſhrub, to grow within 15 feet of the centre, &c.

† *Sect.* 155. By 13. Geo. 3. c. 78. ſ. 6. it is enacted, " That no tree, buſh, or ſhrub, ſhall be permitted to ſtand " or grow in any highways within the diſtance of fifteen " feet from the centre thereof (except for ornament or " ſhelter to the houſe, building, or court yard of the owner " thereof); or hereafter to be planted within the diſtance " aforeſaid; but the ſame ſhall be reſpectively cut down, " grubbed up, and carried away by the owner or occupier " of the land or ſoil, where the ſame doth or ſhall ſtand or " grow, within ten days after notice to him, or his ſteward " or agent, given by the ſaid ſurveyors, or any of them, on " pain of ten ſhillings."

Times of cutting hedges, and felling trees, &c.

† *Sect.* 156. But by 13. Geo. 3. c. 78. ſ. 13. it is provided, " That no perſon ſhall be compelled, nor any ſur- " veyor permitted to cut or prune any hedge, other than be- " tween the laſt day of *December* and the laſt day of *March*; " and that nothing in this act contained ſhall oblige any per- " ſon to fell any timber trees, in hedges, at any time whatſo- " ever, except where the highways ſhall be ordered to be en- " larged, or to cut down or grub up any oak trees grow- " ing within ſuch highway, or in ſuch hedges, except in " the months of *April*, *May*, or *June*, or any aſh, elm, or " other trees, in any other months than in the months of " *December*, *January*, *February*, or *March*."

As to the third particular, *viz.* In what manner all other annoyances obſtructing the highway are to be removed.

1. Jones 222.

Sect. 157. It ſeems clear, that by the common law any one may abate a nuſance to a highway, and remove the materials, but not convert them to his own uſe, as hath been more fully ſhewn in the precedent chapter.

Vide 4. Aſſize 3. 17. Ed. 3. 9. b. 2. Rol. Abr. 137. B. 4. 142. K. L.

Alſo it ſeemeth, that an heir may be indicted for continuing an incroachment, or other nuſance to a highway, begun by his anceſtor, becauſe ſuch a continuance thereof amounts in the judgment of law to a new nuſance.

† *Sect.* 158. But the common law, not having been thought to have provided ſufficiently againſt miſchiefs of that kind, it is enacted by the abovementioned ſtatute of 13. Geo. 3.

Geo. 3. c. 78. ſ. 9. "That if any perſon ſhall lay, in any "highway, any ſtone, timber, ſtraw, dung, or other matter, "or in making, ſcouring, or cleanſing, the ditches, drains, "or watercourſes, ſhall permit the ſoil or earth dug out "of ſuch ditches, drains, or watercourſes, to remain in "ſuch highway in ſuch manner as to obſtruct or prejudice "the ſame, for the ſpace of five days after notice thereof by "the ſurveyor, he ſhall forfeit ten ſhillings." Penalty for nuſances obſtructing highways.

† *Sect.* 159. And by 13. Geo. 3. c. 78. ſ. 10. it is further enacted, "That if any ſtone or timber, or any hay, "ſtraw, ſtubble, or other matter, for the making of ma"nure, or on any other pretence whatſoever, not tole"rated by this act, ſhall be laid in any highway, with"in the diſtance of fifteen feet from the centre thereof, "and ſhall not, within five days after notice by the ſur"veyor, or ſome perſon aggrieved thereby, be removed, "the owner or poſſeſſor of the lands adjacent, or any other "perſon whomſoever, by order from ſome juſtice, may "remove the ſaid ſtone, timber, hay, ſtraw, dung, or "other matter, and have, take, and diſpoſe of the ſame, "to his and their own uſe." If not removed after notice, how to be diſpoſed of.

† *Sect.* 160. And by 13. Geo. 3. c. 78. ſ. 11. for preventing obſtructions in the ſaid highways, it is enacted, "That "if any perſon ſhall wilfully ſet, place, or leave any waggon, "cart, or other carriage, or any plough or inſtrument of "huſbandry, in any of the ſaid highways, (except during "the reaſonable time of loading or unloading, and ſtand"ing as near the ſide of ſuch highway as poſſible) ſo as to "interrupt or hinder the free paſſage of any other carriage, "or of his majeſty's ſubjects, every perſon ſo offending "ſhall forfeit ten ſhillings." Obſtructions to highways by carriages, &c.

† *Sect.* 161. And by 13. Geo. 3. c. 78. ſ. 64. it is further recited, "That whereas inconveniencies have ariſen from making hedges or other fences, and from ploughing or breaking up the ſoil of lands or grounds near the middle or centre of highways:" for remedy thereof, it is enacted, "That if any perſon ſhall incroach, by making "any hedge, ditch, or other fence, on any highway, not "being turnpike road, within the diſtance of fifteen feet "from the middle or centre thereof, or ſhall plough, harrow, "or break up the ſoil of any land or ground, or in ploughing "or harrowing the adjacent lands, ſhall turn his plough in "or upon any land or ground within the diſtance of fifteen "feet from the middle or centre of any highway, where the "breadth of ſuch highway is formed and marked, or deſ"cribed with certainty, and does not exceed in breadth "thirty Penalty of incroaching upon highways.

" thirty feet, he ſhall forfeit forty ſhillings to ſuch perſon " who ſhall make information of the ſame."

Incroachment to be taken down by ſurveyor.

† *Sect.* 162. And by 13. Geo. 3. c. 78. ſ. 64. it is alſo enacted, " The ſurveyor may cauſe ſuch hedge, ditch, or " fence to be taken down, or filled up, at the expence of the " perſon to whom the ſame ſhall belong; and any juſtice of " the limit, upon proof to him upon oath, may levy as well " the expences of taking down ſuch hedges, as the ſeveral " penalties hereby impoſed, by diſtreſs and ſale of the of- " fender's goods and chattels."

Alehouſes not ſuffered on bridges where tolls are kept.

† *Sect.* 163. And by 13. Geo. 3. c. 78. ſ. 63. for preventing obſtructions, which frequently happen by ſtopping of carriages on or near public bridges, it is further enacted, " That if any perſon collecting any tolls " payable for paſſing over any public bridge with carriages " or cattle of any kind ſhall keep any victualling-houſe, " alehouſe, or other place of public entertainment, or " ſhall ſell, or permit to be ſold therein, any wine, beer, " ale, cyder, ſpirituous liquors, or other ſtrong liquors, " by retail, he, being convicted by one witneſs, or his " own confeſſion, before any juſtice of the limit, ſhall " forfeit five pounds."

As to the fourth particular, *viz.* How far all perſons are puniſhable for taking away things made uſe of for the benefit of highways.

Penalty for damaging banks, cauſeways, poſts, blocks, &c. &c.

† *Sect.* 164. It is recited by the abovementioned ſtatute of 13. Geo. 3. c. 78. ſ. 53. " That whereas in ſome places it hath been and may be found neceſſary to ſecure horſe cauſeways and foot cauſeways, by poſts, blocks, or great ſtones, fixed in the ground, or by banks of earth caſt up, or otherwiſe, from being broken up and ſpoiled with waggons, wains, carts, or carriages; and as ſeveral evil-diſpoſed perſons do or may wilfully or wantonly pull up, cut down, and remove or damage the ſaid poſts, blocks, and great ſtones, ſo fixed, or to be fixed, as aforeſaid, and drive carriages upon ſuch banks and cauſeways, or againſt the ſides thereof, and alſo dig or caſt down the ſaid banks, which are the ſecurities and defence of the ſaid cauſeways, whereby the cauſeways or banks are often ruined and deſtroyed; and ſuch evil-diſpoſed perſons do or may break, damage, or throw down the ſtones, bricks, or wood, fixed upon the parapets or battlements of bridges, and do or may pull down, deſtroy, obliterate, or deface, any mile ſtone or poſt, graduated or direction poſt or ſtone, erected or to be erected upon any highway:" it is enacted, " That every " perſon

" perſon guilty of any ſuch offence, ſhall, upon complaint " to any juſtice where the ſame ſhall be proved to be done, " by the oath of one witneſs, or upon view of the juſtice " himſelf, forfeit not exceeding five pounds, nor leſs than " ten ſhillings; and in default of payment, ſhall be com- " mitted to the houſe of correction of ſuch limit, to be " whipped, and kept to hard labour not exceeding one ca- " lendar month, nor leſs than ſeven days (6)."

(6) The ſame proviſions are made in reſpect to turnpike roads by 13. Geo. 3. c. 84.

As to the fifth particular, *viz.* How far perſons may be puniſhed for drawing a carriage with more than five horſes in length.

† *Sect.* 165. It is enacted by 13. Geo. 3. c. 78. ſ. 56. " That no waggon, having the ſole or bottom of the fel- " lies of the wheels of the breadth of nine inches, ſhall go " or be drawn with more than eight horſes; and that no " cart, having the ſole or bottom of the fellies of the breadth " of nine inches, ſhall be drawn with more than five horſes; " and that no waggon, having the ſole or bottom of the " fellies of the breadth of ſix inches, and rolling on each " ſide a ſurface of nine inches, ſhall go or be drawn with " more than ſeven horſes; and that no ſuch waggon rolling " a ſurface of ſix inches only, ſhall go or be drawn with " more than ſix horſes; and that no cart, having the ſole " or bottom of the fellies of the wheels of the breadth of " ſix inches, ſhall go or be drawn with more than four " horſes; and that no waggon having the ſole or bottom " of the fellies of leſs breadth than ſix inches, ſhall go or " be drawn with more than five horſes; and that no cart " having the ſole or bottom of the fellies of leſs breadth " than ſix inches, ſhall go or be drawn with more than " three horſes upon highways, not being turnpike roads; " under pain that the owner of ſuch waggon or cart reſpec- " tively ſhall forfeit five pounds, and the driver, not being " the owner, ten ſhillings, for every horſe or beaſt which " ſhall be ſo drawing above the number hereby ſo reſpec- " tively limited, to the ſole uſe and benefit of the informer: " but carriages moving upon wheels or rollers of the " breadth of ſixteen inches on each ſide thereof, with flat " ſurfaces, are hereby allowed to be drawn with any num- " ber of horſes, or other cattle." (*a*)

Limitations of the number of horſes for carriages with different wheels.

4. Burr. 2258. Stevens v. Duſtey.

(*a*) Vide TURNPIKE ROADS at the end of this chapter, how theſe carriages are favoured in the payment of tolls. Proſecutions for ſuch additional horſes how to be carried on.

† *Sect.* 166. But by 13. Geo. 3. c. 78. ſ. 57. it is provided, " That no proſecution ſhall be commenced before " a juſtice by information, for any forfeiture incurred by " the owner or driver of any carriage, having a greater num- " ber

" ber of horſes therein than are allowed by this act, unleſs " within three days after the offence committed; and that " no action ſhall be commenced for any ſuch offence, unleſs " within one calendar month; and that neither ſuch in- " formation or action, unleſs notice ſhall be given by the " informer to the driver of every ſuch carriage, on the day " upon which the offence ſhall be committed, of an inten- " tion to complain of ſuch offence; and if it ſhall appear " to the juſtice, that the offender lives ſo remote as to make " it inconvenient to ſummon him to appear, the juſtice " may leave the informer to his remedy by action at law."

Juſtices at ſeſſions may licence an additional number of horſes.

† *Sect.* 167. And by 13. Geo. 3. c. 78. ſ. 58. it is further provided, " That the general quarter ſeſſions to be " held in the week after *Michaelmas*, may licence an in- " creaſe of horſes in carriages up any ſteep hill, or on any " road not turnpike, over and above the number herein- " before limited, if upon enquiry into the ſtate and condi- " tion of ſuch roads, they ſhall find any additional num- " ber of horſes neceſſary; and, from time to time, at any " *Michaelmas* quarter ſeſſions, to revoke, alter, or vary the " ſame, as they ſhall think fit."

Juſtices may ſtop proceedings for forfeitures in reſpect of additional horſes.

† *Sect.* 168. And by 13. Geo. 3. c. 78. ſ. 59. it is further provided, " That if it ſhall appear upon the oaths of " credible witneſſes, to the ſatisfaction of any juſtice, or of " any court of juſtice authoriſed to enforce the execution of " this act, that any carriage could not, by reaſon of deep " ſnow or ice, be drawn by the number of horſes or beaſts " allowed; ſuch juſtice, or court reſpectively, are hereby " required to ſtop all proceedings for the recovery of any " penalty incurred by drawing with a greater number than " are hereby allowed."

Vide Stevens and Duſſey, 4. Burr. 2260.

Carriages excepted out of this act.

† *Sect.* 169. But by 13. Geo. 3. c. 78. ſ. 59. it is provided, " That the regulations concerning the number of " horſes, and wheels of carriages, ſhall not be deemed or " conſtrued to extend to carriages employed only in carry- " ing any one ſtone, block of marble, cable rope, or piece " of metal, or piece of timber, or to ſuch ammunition or " artillery as ſhall be for his majeſty's ſervice."

Two oxen equal to one horſe.

† *Sect.* 170. And by 13. Geo. 3. c. 78. ſ. 59. it is enacted, " That two oxen or horned cattle ſhall, for all the pur- " poſes of this act, be conſidered as one horſe."

Regulations in London and Weſtminſter.

† *Sect.* 171. By 6. Geo. 1. c. 6. " No perſon in *London* " and *Weſtminſter*, or within ten miles thereof, ſhall carry " at any one load, in waggons or carts having their wheels " ſhod

" ſhod with iron, more than twelve ſacks of meal of five " buſhels each, nor more than twelve quarters of malt, nor " more than 700½ of bricks, nor more than one chaldron of " coals, on pain of forfeiting any one of the horſes, with " the geers, bridles, and halters therewith uſed, in ſuch " manner and to ſuch uſes, as by 5. Geo. c. 12. (now re- " pealed.)"

† *Sect.* 172. And by 18. Geo. 2. c. 33. " The wheels " of every cart, car, or dray, within the bills of mortality, " ſhall be ſix inches broad in the felly, and not wrought " about with iron, nor be drawn with above the number " of three horſes, after they are up the hills from the water " ſide, on pain of 40s by warrant of one juſtice, by diſtreſs; " and for want of diſtreſs on non-payment in ſix days after " demand, to be committed till paid: but this not to ex- " tend to any country cart or waggon that ſhall bring any " goods, or ſhall carry any goods half a mile beyond the " paved ſtreets of the ſaid cities and places."

† *Sect.* 173. Alſo any perſon, within the ſaid limits, " uſing any cart, car, or dray, having the wheels full ſix " inches broad, when worn, may have the ſame bound " round with tire of iron, provided it be ſix inches broad, " and made flat, and not ſet on with roſe-headed nails."

As to the ſixth particular, *viz.* How far drivers of carriages are puniſhable for miſbehaviour.

† *Sect.* 174. By 13. Geo. 3. c. 78. ſ. 61. it is further recited, " That whereas many bad accidents happen, and great miſchiefs are frequently done upon the ſtreets and highways, by the negligence or wilful miſbehaviour of perſons driving carriages thereon," it is therefore further enacted, " That " if the driver of any cart, car, dray, or waggon, ſhall ride " upon any ſuch carriage in any ſtreet or highway, not hav- " ing ſome other perſon on foot, or on horſeback, to guide " the ſame, (ſuch carriages as are conducted by ſome per- " ſon holding the reins of the horſe or horſes drawing the " ſame excepted); or if the driver of any carriage whatſo- " ever on any part of any ſtreet or highway ſhall, by neg- " ligence, or wilful miſbehaviour, cauſe any hurt or da- " mage to any perſon or carriage paſſing or being upon " ſuch ſtreet or highway, or ſhall quit the highway, and go " on the other ſide of the hedge or fence incloſing the ſame, " or wilfully be at ſuch diſtance from ſuch carriage whilſt " it ſhall be paſſing upon ſuch highway, that he cannot " have the direction and government of the horſes or cattle " drawing the ſame; or ſhall, by negligence or wilful miſ- " beha-

Drivers of carriages puniſhable for miſbehaviour or negligence, in order to prevent accidents.

" behaviour, prevent, hinder, or interrupt the free paſſage " of any other carriage, or of his majeſty's ſubjects, on the " ſaid highways; or if the driver of any empty or unloaded " waggon, cart, or other carriage, ſhall refuſe or neglect to " turn aſide and make way for any coach, chariot, chaiſe, " loaded waggon, cart, or other loaded carriage; or if any " perſon ſhall drive, or act as the driver, of any ſuch coach, " poſt-chaiſe, or other carriage let for hire, or waggon, " wain, or cart, not having the owner's name as before re- " quired, painted thereon, or ſhall refuſe to diſcover the " true chriſtian and ſurname of the owner of ſuch reſpective " carriages; being convicted by his own confeſſion, the " view of a juſtice, or the oath of one witneſs, before any " juſtice of the limit, ſhall forfeit not exceeding ten ſhil- " lings, in caſe ſuch driver ſhall not be the owner of ſuch " carriage; and in caſe the offender be owner, then not " exceeding twenty ſhillings: and in either caſe ſhall, in " default of payment, be committed to the houſe of correc- " tion, not exceeding one month, unleſs the ſame ſhall be " ſooner paid."

† *Sect.* 175. And by 13. Geo. 3. c. 78. ſ. 61. " Every " ſuch driver may, with or without any warrant, be ap- " prehended by any perſon who ſhall ſee ſuch offence com- " mitted, and ſhall be immediately conveyed to a peace of- " ficer, in order to be conveyed before ſome juſtice."

† *Sect.* 176. And by 13. Geo. 3. c. 78. ſ. 61. " If any " ſuch driver ſhall refuſe to diſcover his name, the juſtice " before whom he ſhall be taken, or to whom any ſuch " complaint ſhall be made, may commit him to the houſe " of correction not exceeding three months, or proceed a- " gainſt him for the penalty aforeſaid, by a deſcription of " his perſon and the offence, and expreſſing in ſuch pro- " ceedings that he refuſed to diſcover his name."

Drivers of carriages miſ-behaving.

† *Sect.* 177. By 1. Geo. 1. ſt. 2. c. 57. " If any perſon " driving any cart, dray, or waggon, in the ſtreets of *London*, " ſhall ride upon the ſame, not having ſome other perſon " on foot to guide the ſame, he ſhall, on conviction before " the alderman of the ward, or a juſtice of the peace, on " oath of one witneſs, forfeit 10s. by diſtreſs and ſale; half " to the informer and half to the poor; and in default " of payment, to be ſent to the houſe of correction for " three days."

† *Sect.* 178. And by the 24. Geo. 2. c. 43. " If any carter, " drayman, carman, waggoner, or other driver, ſhall ride " upon the ſame in *London*, or within ten miles thereof, " not

" not having ſome other perſon on foot to guide the ſame, " he ſhall, on the like conviction, forfeit ten ſhillings in caſe " ſuch driver ſhall not be the owner of ſuch carriage; and " in caſe he be the owner, then any ſum not exceeding " twenty ſhillings; to be recovered, levied, and applied, as " by the aforeſaid act of the 1. Geo. ſt. 2. c. 57. And any " perſon, though not a peace officer, may ſtop and apprehend " ſuch offender, and carry him as ſoon as conveniently may " be before a juſtice; and if any perſon ſhall reſiſt, abuſe, " or prevent any perſon endeavouring to apprehend ſuch of- " fender, or when he is apprehended ſhall reſcue, or en- " deavour to reſcue him, he ſhall forfeit twenty ſhillings in " like manner."

† *Sect.* 179. By 30. Geo. 2. c. 22. ſ. 7 & 12. " If the dri- " ver of any carriage within *London* or *Weſtminſter*, or in any " public ſtreet or common highway within the bills, ſhall, by " negligence or wilful miſbehaviour, interrupt the free paſ- " ſage of his majeſty's ſubjects; he ſhall on conviction by " confeſſion or oath of one witneſs, before one juſtice, forfeit " any ſum not exceeding twenty ſhillings, or be committed " to the houſe of correction, or ſome other priſon of the " place where the offence ſhall have been committed, or the " offender ſhall have been apprehended, to be kept to hard " labour for any time not exceeding one calendar month: " the ſaid forfeiture to be levied by diſtreſs by warrant of " ſuch juſtice; and to be half to the proſecutor, and half " to the overſeers for the uſe of the poor of the pariſh or " place where the offence ſhall be committed, or the of- " fender ſhall be apprehended; and if there be no over- " ſeer, then to ſome other officer for the uſe of the poor " as aforeſaid."

If any driver of a carriage in *London* or *Weſtminſter* ſhall, avoidably, make a ſtoppage in the ſtreet, he ſhall forfeit twenty ſhillings.

† *Sect.* 180. And by 30. Geo. 2. c. 22. ſ. 13. " Any perſon " who ſhall ſee any offence committed againſt this act, may " by authority of this act, and without any other warrant, " apprehend the offender, and ſhall with all convenient " ſpeed convey or deliver him to a conſtable or other peace " officer of the place where the offence ſhall be committed, or " the offender ſhall be apprehended, in order to be conveyed " before a juſtice, there to be dealt with according to law."

And any perſon on view may apprehend the offender.

† *Sect.* 181. And by 30. Geo. 2. c. 22. ſ. 11. " If he ſhall " refuſe to diſcover his name and place of abode to the juſ- " tice before whom he ſhall be brought, he ſhall be imme- " diately delivered over to a conſtable or other peace officer, " and ſhall by him be conveyed to the common gaol or " houſe of correction of the place where the offence ſhall " be committed, there to remain until he ſhall declare his

The offender ſhall diſcover his name and abode, or be committed.

" behaviour, prevent, hinder, or interrupt the free paſſage " of any other carriage, or of his majeſty's ſubjects, on the " ſaid highways; or if the driver of any empty or unloaded " waggon, cart, or other carriage, ſhall refuſe or neglect to " turn aſide and make way for any coach, chariot, chaiſe, " loaded waggon, cart, or other loaded carriage; or if any " perſon ſhall drive, or act as the driver, of any ſuch coach, " poſt-chaiſe, or other carriage let for hire, or waggon, " wain, or cart, not having the owner's name as before re- " quired, painted thereon, or ſhall refuſe to diſcover the " true chriſtian and ſurname of the owner of ſuch reſpective " carriages; being convicted by his own confeſſion, the " view of a juſtice, or the oath of one witneſs, before any " juſtice of the limit, ſhall forfeit not exceeding ten ſhil- " lings, in caſe ſuch driver ſhall not be the owner of ſuch " carriage; and in caſe the offender be owner, then not " exceeding twenty ſhillings: and in either caſe ſhall, in " default of payment, be committed to the houſe of correc- " tion, not exceeding one month, unleſs the ſame ſhall be " ſooner paid."

† *Sect.* 175. And by 13. Geo. 3. c. 78. ſ. 61. " Every " ſuch driver may, with or without any warrant, be ap- " prehended by any perſon who ſhall ſee ſuch offence com- " mitted, and ſhall be immediately conveyed to a peace of- " ficer, in order to be conveyed before ſome juſtice."

† *Sect.* 176. And by 13. Geo. 3. c. 78. ſ. 61. " If any " ſuch driver ſhall refuſe to diſcover his name, the juſtice " before whom he ſhall be taken, or to whom any ſuch " complaint ſhall be made, may commit him to the houſe " of correction not exceeding three months, or proceed a- " gainſt him for the penalty aforeſaid, by a deſcription of " his perſon and the offence, and expreſſing in ſuch pro- " ceedings that he refuſed to diſcover his name."

Drivers of carriages miſ-behaving.

† *Sect.* 177. By 1. Geo. 1. ſt. 2. c. 57. " If any perſon " driving any cart, dray, or waggon, in the ſtreets of *London*, " ſhall ride upon the ſame, not having ſome other perſon " on foot to guide the ſame, he ſhall, on conviction before " the alderman of the ward, or a juſtice of the peace, on " oath of one witneſs, forfeit 10s. by diſtreſs and ſale; half " to the informer and half to the poor; and in default " of payment, to be ſent to the houſe of correction for " three days."

† *Sect.* 178. And by the 24. Geo. 2. c. 43. " If any carter, " drayman, carman, waggoner, or other driver, ſhall ride " upon the ſame in *London*, or within ten miles thereof, " not

" not having ſome other perſon on foot to guide the ſame, " he ſhall, on the like conviction, forfeit ten ſhillings in caſe " ſuch driver ſhall not be the owner of ſuch carriage; and " in caſe he be the owner, then any ſum not exceeding " twenty ſhillings; to be recovered, levied, and applied, as " by the aforeſaid act of the 1. Geo. ſt. 2. c. 57. And any " perſon, though not a peace officer, may ſtop and apprehend " ſuch offender, and carry him as ſoon as conveniently may " be before a juſtice; and if any perſon ſhall reſiſt, abuſe, " or prevent any perſon endeavouring to apprehend ſuch of- " fender, or when he is apprehended ſhall reſcue, or en- " deavour to reſcue him, he ſhall forfeit twenty ſhillings in " like manner."

† *Sect.* 179. By 30. Geo. 2. c. 22. ſ. 7 & 12. " If the dri- " ver of any carriage within *London* or *Weſtminſter*, or in any " public ſtreet or common highway within the bills, ſhall, by " negligence or wilful miſbehaviour, interrupt the free paſ- " ſage of his majeſty's ſubjects; he ſhall on conviction by " confeſſion or oath of one witneſs, before one juſtice, forfeit " any ſum not exceeding twenty ſhillings, or be committed " to the houſe of correction, or ſome other priſon of the " place where the offence ſhall have been committed, or the " offender ſhall have been apprehended, to be kept to hard " labour for any time not exceeding one calendar month: " the ſaid forfeiture to be levied by diſtreſs by warrant of " ſuch juſtice; and to be half to the proſecutor, and half " to the overſeers for the uſe of the poor of the pariſh or " place where the offence ſhall be committed, or the of- " fender ſhall be apprehended; and if there be no over- " ſeer, then to ſome other officer for the uſe of the poor " as aforeſaid."

If any driver of a carriage in *London* or *Weſtminſter* ſhall, avoidably, make a ſtoppage in the ſtreet, he ſhall forfeit twenty ſhillings.

† *Sect.* 180. And by 30. Geo. 2. c. 22. ſ. 13. " Any perſon " who ſhall ſee any offence committed againſt this act, may " by authority of this act, and without any other warrant, " apprehend the offender, and ſhall with all convenient " ſpeed convey or deliver him to a conſtable or other peace " officer of the place where the offence ſhall be committed, or " the offender ſhall be apprehended, in order to be conveyed " before a juſtice, there to be dealt with according to law."

And any perſon on view may apprehend the offender.

† *Sect.* 181. And by 30. Geo. 2. c. 22. ſ. 11. " If he ſhall " refuſe to diſcover his name and place of abode to the juſ- " tice before whom he ſhall be brought, he ſhall be imme- " diately delivered over to a conſtable or other peace officer, " and ſhall by him be conveyed to the common gaol or " houſe of correction of the place where the offence ſhall " be committed, there to remain until he ſhall declare his

The offender ſhall diſcover his name and abode, or be committed.

" name and place of abode to the ſaid juſtice, or to ſome " other juſtice of ſuch place."

Inhabitants may be witneſſes.

† *Sect.* 182. By 30. Geo. 2. c. 22. ſ. 14. " Any perſon ſhall " be admitted to be an evidence, notwithſtanding his being an " inhabitant of the place where the offence ſhall be committed.

† *Sect.* 183. But by 30. Geo. 2. c. 22. ſ. 15. it is provided, " That perſons puniſhed by this act ſhall not be puniſhed " by any former law."

The owner's name, &c. to be painted on all carriages.

† *Sect.* 184. And by 13. Geo. 3. c. 78. ſ. 60. for the better diſcovery of offenders, it is enacted, " That the owner " of every waggon, wain, cart, coach, poſt-chaiſe, or other " carriage let to hire, ſhall cauſe to be painted, upon ſome " conſpicuous part of his waggon, wain, or cart, and upon " the pannels of the doors of all ſuch coaches, poſt-chaiſes, " or other carriages, before the ſame ſhall be uſed upon " any public highway, his chriſtian and ſurname, and the " place of his abode, in large legible letters, and continue " the ſame thereupon ſo long as ſuch waggon, cart, coach, " poſt-chaiſe, or other carriage, ſhall be uſed upon any " ſuch highway; and the owner of every common ſtage " waggon or cart, employed in travelling ſtages from town " to town, ſhall, over and above his or her chriſtian and " ſurname, paint, or cauſe to be painted, on the part, and " in the manner aforeſaid, the following words, " COM- " MON STAGE WAGGON, or CART, as the caſe may be, upon " pain of forfeiting a ſum not exceeding five pounds, nor " leſs than twenty ſhillings."

As to THE EIGHTH GENERAL HEAD of this Chapter, *viz.* In what manner thoſe who are charged with any offence relating to the highway are to be proceeded againſt.

The forms of proceeding.

† *Sect.* 185. It is enacted by the abovementioned ſtatute of 13. Geo. 3. c. 78. ſ. 70. " That the forms of proceedings " in the ſchedule ſhall be uſed, upon all occaſions, with " ſuch additions or variations only as may be neceſſary to " adapt them to the particular exigences of the caſe; and " that no objection ſhall be made, or advantage taken, for " want of form in any ſuch proceedings."

Printed abſtracts to be given to the ſurveyors.

† *Sect.* 186. And by 13. Geo. 3. c. 78. ſ. 71. it is further enacted, " That the juſtices ſhall, at every ſpecial ſeſſions to " be held in the week next after the *Michaelmas* general " quarter ſeſſions, procure and deliver a printed abſtract of " the moſt material parts of this act to every ſurveyor to " be then appointed, as the charge hereby directed to be " given, who ſhall ſeverally pay ſixpence for the ſame."

† *Sect.*

† *Sect.* 187. And by 13. Geo. 3. c. 78. ſ. 73. it is further enacted, "That all penalties and forfeitures, and all coſts "and charges (the manner of levying and recovering of "which is not hereby otherwiſe particularly directed), ſhall "be levied by diſtreſs and ſale of the goods and chattels of the "offender, by warrant under the hand and ſeal of ſome juſ- "tice for the limit where ſuch offence ſhall happen, or ſuch "order for payment of ſuch coſts or charges ſhall be made, "rendering the overplus to the party after deducting the "charges of making the ſame; which warrant ſuch juſtice "is hereby impowered to grant, upon conviction by confeſ- "ſion, or the oath of one witneſs, or upon order made as "aforeſaid; and when ſo levied, ſhall be paid, the one half "to the informer, and the other half to the ſurveyor where "ſuch offence ſhall happen; to be applied towards the re- "pairs, unleſs otherwiſe directed by this act; but in caſe "the ſurveyor ſhall be the informer, then the whole ſhall be "employed towards the repair of ſuch highway: and in caſe "ſuch diſtreſs cannot be found, and ſuch penalties or coſts "and charges ſhall not be forthwith paid, ſuch juſtice is "hereby authoriſed, by warrant under his hand or ſeal, to "commit ſuch offender to the common gaol or houſe of cor- "rection of the limit where the offence ſhall be committed, "or ſuch order as aforeſaid ſhall be made, for any time not "exceeding three months, unleſs the ſaid penalty, coſts, "and charges, ſhall be ſooner paid."

Forfeitures, coſts, and charges, may be levied by diſtreſs, &c.

In what manner to be applied.

† *Sect.* 188. And by 13. Geo. 3. c. 78. ſ. 73. "If ſuch "offender ſhall live out of the juriſdiction of the juſtice, "any juſtice of the limit wherein ſuch perſon ſhall inhabit, "upon requeſt to him for that purpoſe made, and upon a "true copy of the conviction, and order for the payment of "ſuch coſts and charges, produced and proved by a credible "witneſs upon oath, may, by warrant under his hand and "ſeal, cauſe the penalty mentioned in ſuch conviction, and "the coſts and charges mentioned in ſuch order, or ſo much "thereof as ſhall not have been paid, to be levied, by diſtreſs "and ſale of the goods and chattels of ſuch offender; and "if no ſufficient diſtreſs can be had, commit ſuch offender "to the common gaol, or houſe of correction of ſuch limit, "for the time, and in manner aforeſaid."

How to proceed when the offender lives within another juriſdiction.

† *Sect.* 189. But by 13. Geo. 3. c. 78. ſ. 74. it is provided, "That no warrant of diſtreſs, unleſs otherwiſe directed by "this act, ſhall be iſſued for levying any penalty, coſts, or "charges, until ſix days after the offender ſhall have been "convicted, and an order made and ſerved upon him or her "for payment thereof."

Warrant of diſtreſs when to be iſſued.

Convictions how to be made. Strange 182. 10. Mod. 150.

† *Sect.* 190. And by 13. Geo. 3. c. 78. ſ. 77. it is further enacted, "That no conviction ſhall be made unleſs upon "confeſſion, or the oath of one witneſs, or the view of a "juſtice in the caſes before mentioned; and that any inhabitant ſhall be deemed a competent witneſs."

(7) Vide Kelynge 34. Str. 900. 944. B. R. H. 99. Seſſ. Caſ. 179. 415. Strange 1209. Barn. K. B. 111. 445. 1. Black. 467.

† *Sect.* 191. And by 13. Geo. 3. c. 78. ſ. 24. it is further enacted, "That every juſtice of aſſize, juſtices of the counties palatine of *Cheſter*, *Lancaſter*, and *Durham*, and of the great ſeſſions in *Wales*, ſhall have authority by this ſtatute, upon his or their own view, and every juſtice of the peace, either upon his own view (7), or upon information upon oath to him given by any ſurveyor of the highways, to make preſentment, at their reſpective aſſizes or great ſeſſions, or in the open general quarter ſeſſions, of ſuch reſpective limit, of any highway, cauſeway, or bridge, not well and ſufficiently repaired and amended, or of any other default or offence committed and done contrary to the proviſion and intent of this ſtatute; and that all defects in the repair thereof ſhall be preſented in ſuch juriſdiction where the ſame do lie, and not elſewhere."

Rex *v.* Penderryn, 2. T. Rep. 513.

† *Sect.* 192. It hath been determined on this clauſe of the ſtatute, that a preſentment againſt a ſmaller diſtrict than a pariſh, muſt ſtate expreſly how they are liable to repair the roads.

No proſecution to be removed untill after judgment.

† *Sect.* 193. And by 13. Geo. 3. c. 78. ſ. 24. it is further enacted, "That no ſuch preſentment, nor any indictment "for any ſuch default or offence, ſhall be removed by *certiorari*, or otherwiſe, out of ſuch juriſdiction, till ſuch indictment or preſentment be traverſed, and judgment "thereupon given, except where the duty or obligation of "repairing the ſaid highways, cauſeways, or bridges, may "come in queſtion."

Rex *v.* Inhabitants of Bodenham, Cowper 78.

† *Sect.* 194. Upon this clauſe it is reſolved, that *a certiorari pro rege* lies before traverſe of the indictment and judgment thereupon; for the king does not traverſe, and therefore the words "till ſuch indictment be traverſed," ſhew very plainly that this clauſe was not intended to take away the writ of *certiorari* at the inſtance of the crown; and although a private perſon is the real proſecutor, yet *in theſe caſes* that circumſtance makes no diſtinction; for it was calculated merely to prevent delay on the part of defendants.

2. Term Rep. 260.

† *Sect.* 195. It hath alſo been determined upon this clauſe, that it is no objection to a *certiorari* to remove a preſentment of a road made by a juſtice of the peace under it, that it is proſecuted by another than the juſtice preſenting it, if it be by his conſent.

† *Sect.*

† *Sect.* 196. And by 13. Geo. 3. c. 78. ſ. 24. "Every "ſuch preſentment made by any ſuch juſtice of aſſize, coun- "ties palatine, great ſeſſions, or of the peace, upon his own "view, or upon ſuch information having been given to ſuch "juſtice of the peace, upon the oath of ſuch ſurveyor of the "highways, as aforeſaid, ſhall be as good, and of the ſame "force, ſtrength, and effect, in the law, as if the ſame had "been preſented and found by the oaths of twelve men." Juſtices of aſſize and of the peace, &c. to preſent highways, &c. out of repair.

† *Sect.* 197. And by 13. Geo. 3. c. 78. ſ. 24. it is further enacted, "That for every ſuch default or offence ſo preſent- "ed as aforeſaid, the juſtices of aſſize, counties palatine, "and great ſeſſions, at their reſpective courts, and the juſ- "tices of the peace at their general quarter ſeſſions, ſhall "have authority to aſſeſs ſuch fines as to them ſhall be "thought meet; ſaving to every perſon and perſons that "ſhall be affected by any ſuch preſentment, his, her, or "their lawful traverſe to the ſame preſentment, as well with "reſpect to the fact of non-repair as to the duty or obliga- "tion of repairing the ſaid highways, as they might have "had upon any indictment of the ſame preſented and found "by a grand jury." Surveyor ſhall be fined for neglecting to preſent roads out of repair.

† *Sect.* 198. It is now ſettled, that the juſtices are compellable by *mandamus* to receive a general traverſe to a preſentment of a highway being out of repair, made by a juſtice of peace upon view. Burr. 1532. 4. Mod 38. Show. 270. 1. Black. 463.

† *Sect.* 199. And by 13. Geo. 3. c. 78. ſ. 24. "The juſtices "of the peace, at their general quarter ſeſſions, or the major "part of them, may, if they ſee juſt cauſe, direct the proſe- "cutions upon ſuch preſentments as ſhall be made at the "quarter ſeſſions as aforeſaid, to be carried on at the general "expence of ſuch limit, and to be paid out of the general "rates within the ſame." Juſtices may order proſecutions.

Sect. 200. It hath been holden in the expoſition of this clauſe, that the party againſt whom ſuch *a preſentment* ſhall be made, cannot take any traverſe to the want of repair of ſuch highway; but it is agreed, that he may plead that ſome other perſon ought to repair the ſame, and traverſe his own obligation to do it. Neither can I ſee upon what reaſon the former opinion is grounded, that he cannot traverſe the want of repair of ſuch highway; for ſince the ſtatute expreſsly ſaves to every perſon who ſhall be touched by any ſuch preſentment his lawful traverſe to the ſame, as he might have to an indictment of treſpaſs or forcible entry; and ſince it ſeems clear, that every defendant to any ſuch indictment may traverſe the whole matter alledged againſt him, as hath been Keilw. 34. Crom. 131. Dalt. c. 26. 1. Black. 467.

See Carth. 212, 213. Sup. c. 64. f. 18.

5. Hen. 7. Dyer 13.

ſhewn more at large Chap. 64. Sect. 58. why may he not as well have the ſame benefit in the preſent caſe? And though the record of a juſtice of peace acting by force of any ſtatute as a judge, be not traverſable; yet it ſeems hard by ſuch a general rule, to make any record not traverſable, which by the expreſs words of the ſtatute, which authoriſes the making of it, is allowed to be traverſable: it is true indeed, that a preſentment in a court-leet is not traverſable, unleſs it touch the party's freehold; but I do not ſee why ſuch a preſentment in purſuance of this ſtatute ſhould have the like privilege, ſince the ſtatute hath no mention of ſuch preſentments in courts-leet, but gives the like traverſe as is allowed by law upon any indictment of treſpaſs, &c.

Aſſeſſments may be levied by diſtreſs.

† *Sect.* 201. And by 13. Geo. 3. c. 78. ſ. 68. it is alſo enacted, "That if any perſon ſhall refuſe or neglect to pay "any aſſeſſment within ten days after demand thereof made, "the ſame ſhall be levied by any perſon authoriſed by war- "rant under the hand and ſeal of one juſtice, having juriſ- "diction therein, by diſtreſs and ſale of the goods and chat- "tels of the perſon ſo refuſing or neglecting, rendering the "overplus, the neceſſary charges of making ſuch diſtreſs "and ſale being firſt deducted; and in default of ſuch diſ- "treſs, any ſuch juſtice may commit the perſon to the com- "mon gaol, until he ſhall have paid the ſum ſo aſſeſſed, "and the coſts and charges occaſioned by ſuch neglect or "refuſal."

† *Sect.* 202. And by 13. Geo. 3. c. 78. ſ. 69. "The ſur- "veyor ſhall be deemed, in all caſes, a competent witneſs, "notwithſtanding his ſalary may ariſe in part from the for- "feitures and penalties hereby inflicted."

How the proſecutor may proceed for a forfeiture above 40s.

† *Sect.* 203. And by 13. Geo. 3. c. 78. ſ. 75. it is alſo enacted, "That every proſecutor or informer may, at his "election, ſue for, and recover any penalty of forty ſhillings "or upwards (the manner of recovery thereof not being "particularly directed by this act), either in the manner "herein before directed, or by action at law, in any of his "majeſty's courts of record, by action of debt, in which it "ſhall be ſufficient to declare that the defendant is indebted "as deſcribed in the act, and the plaintiff, if he recovers, "ſhall have double coſts."

Limitation of actions and notice.

† *Sect.* 204. But by 13. Geo. 3. c. 78. ſ. 76. it is provided, "That there ſhall not be more than one recovery for the "ſame offence; and that ten days notice in writing be given "to the party offending previous to the commencement of "ſuch action; and that the ſame be brought and com-

"menced

" menced within one calendar month after the offence for " which ſuch action is brought ſhall have been committed."

† *Sect.* 205. And by 13. Geo. 3. c. 78. ſ. 79. it is further enacted, " That where any diſtreſs is levied, the diſtreſs " itſelf ſhall not be deemed unlawful, nor the party making " the ſame a treſpaſſer, on account of any default or want " of form in any proceedings relating thereto; nor ſhall " the party diſtraining be deemed a treſpaſſer *ab initio*, on " account of any irregularity which ſhall be afterwards done " by the party diſtraining, but the perſon aggrieved by ſuch " irregularity may recover full ſatisfaction for the ſpecial " damage in an action on the caſe." Special damage, but diſtreſs not unlawful for want of form.

† *Sect.* 206. And by 13. Geo. 3. c. 78. ſ. 65. it is further enacted, " That the Court before whom any indictment or " preſentment ſhall be tried, may award *coſts* to the proſe- " cutor, to be paid by the perſon ſo indicted or preſented, " if it ſhall appear that the defence was frivolous; or to " award coſts to the perſon indicted or preſented, to be paid " by the proſecutor, if it ſhall appear that ſuch proſecution " was vexatious."

† *Sect.* 207. It hath been determined, that if a perſon indicted for not repairing a road *ratione tenuræ* be convicted, the Court will not inflict a ſmall fine on a certificate of the road being repaired, until the proſecutor's coſts are paid. Rex *v.* Wingfield, 1. Bl. Rep. 602.

† *Sect.* 208. It hath alſo been determined, that if the defendants in an indictment for not repairing a road, and which is removed by *certiorari*, be acquitted for want of proſecution, the court of king's bench has no power to award coſts to the defendant on the ground of its being a vexatious proſecution on the above clauſe, but the application muſt be made to the judge at *niſi prius*. Rex *v.* Chadderton, 5. T. Rep. 272.

† *Sect.* 209. And by 13. Geo. 3. c. 78. ſ. 66. it is further enacted, " That if the inhabitants ſhall agree, at a " veſtry or public meeting, to proſecute any perſon by in- " dictment, or to defend any indictment or preſentment " preferred againſt any pariſh, townſhip, or place, the ſur- " veyor may charge in his account the reaſonable expences " incurred in carrying on or defending ſuch reſpective pro- " ſecutions, after the ſame ſhall have been agreed to by ſuch " inhabitants at a veſtry or public meeting, or allowed by a " juſtice within the limit where ſuch highway ſhall be; " which expences ſhall be paid out of the fines, forfeitures, " compoſitions, payments, and aſſeſſments."

† *Sect.* 210. And by 13. Geo. 3. c. 78. ſ. 67. it is further enacted, "That in all caſes where a veſtry or public meeting of the inhabitants is directed by this act, there ſhall be public notice given of the day, hour, and place, of holding the ſaid meeting, at the church or chapel of ſuch pariſh, townſhip, or place, on the *Sunday* next preceding ſuch meeting, and alſo notice thereof in writing, ſpecifying the purpoſe of ſuch meeting, fixed at the ſame time upon the door of ſuch church or chapel, and the ſame ſhall not be held till three days at leaſt after ſuch notice given; and if there be no church or chapel, the like notice of ſuch meeting ſhall be given in writing, and put up at the moſt public place therein, three days at leaſt before ſuch meeting."

Forfeiture for oppoſing the execution of the act.

† *Sect.* 211. And by 13. Geo. 3. c. 78. ſ. 72. it is further enacted, "That in caſe any perſon ſhall reſiſt or make forcible oppoſition againſt any employed in the due execution of this act, or make any reſcue of the cattle or other goods diſtrained; or if any conſtable, headborough, or tithingman, ſhall refuſe or neglect to execute or obey any warrant or precept granted by any juſtice, purſuant to the directions of this act; being convicted by a juſtice, ſhall forfeit not exceeding ten pounds, nor leſs than forty ſhillings; to be paid to the ſurveyor (8) where the offence was committed, to be laid out in the repair of the highways: and in caſe he do not forthwith pay, or ſecure to be paid, the ſaid forfeiture after ſuch conviction, ſuch juſtice may commit ſuch perſon to the common gaol or houſe of correction of the limit, to remain not exceeding three months, unleſs the ſaid forfeiture ſhall be ſooner paid."

(8) Vide 1. Black. 603.

2. Str. 1269. 2. Str. 944. See B. 2. C. 27. S. 37. 46, 47. Cowper 78.

† *Sect.* 212. By 13. Geo. 3. c. 78. ſ. 24. it is enacted, "That all defects of repairs of cauſeys, pavements, highways or bridges, ſhall be preſented in the county only where ſuch cauſeys, &c. lie, and not elſewhere; and that no ſuch preſentment or indictment ſhall be removed by *certiorari*, or otherwiſe, out of the ſaid county, till ſuch indictment or preſentment be traverſed, and judgment thereupon given."

† *Sect.* 213. And by 13. Geo. 3. c. 78. ſ. 81. it is further enacted, "That all matters concerning highways, cauſeys, pavements, and bridges, mentioned in the ſaid act, ſhall be determined in the county where the ſame do lie, and not elſewhere; and that no preſentment, indictment, or order, made by virtue of the ſaid act, ſhall be removed by *certiorari* out of the ſaid county into any other court."

† *Sect.*

† *Sect.* 214. Yet it hath been reſolved, that if the *quarter-ſeſſions*, under pretence of the juriſdiction given them by theſe ſtatutes, take upon them to do a thing manifeſtly exceeding their authority, as to make an order on ſurveyors of the highways to make up their accounts before a *ſpecial ſeſſions*, there proceedings may be removed by *certiorari* into the king's bench, and there quaſhed; for the quarter-ſeſſions have no manner of power given them to intermeddle originally with ſuch accounts, but only by way of appeal (9).

Queen *v.* Bramby, Mic. 10. Ann. Strange 849. 900. 944. 1209. Bar. K. B. 111. 236. 445. Caſ. Temp. King, &c. 99. Seſſ. Caſes, 163. 329.

(9) See ante, ſect. 44. &c.

† *Sect.* 215. And if the proſecutor has enlarged the rule for ſhewing cauſe why the order ſhould not be quaſhed, he cannot afterwards object to the iſſuing of the *certiorari*.

2. Burr. 745.

† *Sect.* 216. And by 13. Geo. 3. c. 78. ſ. 78. it is further enacted, "That any juſtice may adminiſter an oath to any "perſon for the better diſcovery and execution of the "ſeveral matters or things hereinbefore authorized or "directed to be examined, enquired into, or performed by "ſuch juſtice."

Oaths.

† *Sect.* 217. And by 13. Geo. 3. c. 78. ſ. 62. it is further enacted, "That any two juſtices are hereby impowered to "hold any ſpecial ſeſſions, beſides that which is hereinbefore "directed, for executing the purpoſes of this act; and to "adjourn the ſame from time to time, as they ſhall think fit, "cauſing notice to be given of the time and place of hold-"ing ſuch ſpecial ſeſſions, and of the adjournments thereof, "to the ſeveral juſtices acting and reſiding within ſuch "limits, by the high conſtable, or other proper officer "within the ſame."

Juſtices may hold ſpecial ſeſſions on notice.

As to THE NINTH GENERAL HEAD of this chapter, *viz.* In what manner perſons proceeded againſt for any of the above-mentioned offences may defend themſelves.

† *Sect.* 218. It is enacted by the ſaid ſtatute, 13. Geo. 3. c. 78. par. 81. "That any perſon aggrieved by any perſon "in the execution of this act, and for which no particular "method of relief hath been appointed, may appeal to the "general quarter-ſeſſions, ſuch appellant giving notice in "writing of ſuch appeal, and of the matter thereof, to the "perſon againſt whom ſuch complaint ſhall be made, "within ſix days after the cauſe of ſuch complaint aroſe, "and within four days after ſuch notice, entering into re-"cognizance before ſome juſtice within ſuch limit, with "one ſurety, conditioned to try ſuch appeal at, and abide "the

Appeal may be made to the quarter-ſeſſions.

" the order of, and pay ſuch coſts as ſhall be awarded by " the quarter-ſeſſion."

† *Sect.* 219. And by 13. Geo. 3. c. 78. ſ. 81. " Every perſon having received notice of ſuch appeal, ſhall return all " proceedings before them to the general quarter-ſeſſions, " on pain of five pounds."

† *Sect.* 220. And by 13. Geo. 3. c. 78. ſ. 81. " The ſaid " ſeſſion, upon due proof of ſuch notice and recognizance, " ſhall hear and finally determine ſuch appeal in a ſummary " way, and award coſts to the parties appealing or appealed " againſt, to be levied as before directed."

Proceedings not to be quaſhed for want of form, nor to be removed by *certiorari*.

† *Sect.* 221. And by 13. Geo. 3. c. 78. ſ. 81. " The determination of ſuch quarter-ſeſſion ſhall be final and conclu- " ſive, and no proceedings ſhall be quaſhed or vacated for " want of form, or removed by *certiorari*, or any other writ " or proceſs whatſoever (except as hereinbefore mentioned), " into any court of record at *Weſtminſter*, provided that no " ſuch appeal ſhall be made againſt any conviction for any " penalty, unleſs the perſon convicted ſhall, at the time of " ſuch conviction if preſent, if not within ſix days after, " give notice of his intention to appeal, and at the ſame " time enter into recognizance with ſufficient ſureties to " pay ſuch penalty, in caſe ſuch conviction ſhall be " affirmed; and upon his giving ſuch ſecurity, the further " proceeding for ſuch penalty ſhall be ſuſpended until ſuch " appeal ſhall be heard and determined."

Limitation of actions, and mode of pleading.

† *Sect.* 222. And by 13. Geo. 3. c. 78. ſ. 82. it is further enacted, " That every action or ſuit ſhall be commenced " or proſecuted within three calendar months after the fact " committed, and not afterwards; and ſhall be brought " within the county where the fact was committed, and the

General iſſue.

" defendant may plead the *general iſſue*, and give this act, " and the ſpecial matter, in evidence. And if brought " after the time limited, or laid in any other place than " as aforementioned, the jury ſhall find for the defendant; " or if the plaintiff ſhall become nonſuit, or diſcontinue " after the defendant ſhall have appeared, or if, upon de- " murrer, judgment ſhall be given againſt the plaintiff, the

Treble coſts.

" defendant ſhall recover treble coſts."

Bazing *v.* Skelton, 5. Term Rep. 16.

† *Sect.* 223. It hath been determined upon this clauſe of the ſtatute, that gatekeepers ſued on ſubſequent ſtatutes, as for aſſault and impriſonment, under the poſt-horſe duty act, 25. Geo. 3. c. 51. for not delivering the ticket required by

by that ſtatute, need not be ſued in the county where the fact was committed.

† *Sect.* 224. But by 13. Geo. 3. c. 78. ſ. 80. it is alſo provided, "That no plaintiff ſhall recover for any irregularity, treſpaſs, or wrongful proceedings, if tender of ſufficient amends ſhall be made before ſuch action brought; and in caſe no ſuch tender ſhall have been made, the defendant, by leave of the Court at any time before iſſue joined, may pay into court ſuch ſum of money as he ſhall ſee fit. But nothing in this act contained ſhall extend to the city of *Briſtol*, or to the pariſh of *Whitechapel*, and *Saint John, Wapping*, nor to abridge the powers of the commiſſioners of ſewers, &c." Plaintiffs not to recover if tender of amends is made.

Sect. 225. Alſo it ſeems to be implied in the conſtruction of theſe as well as of all other penal ſtatutes, that no one ought to be convicted of any offence againſt them, without having notice of the accuſation made againſt him, and an opportunity of defending himſelf. And therefore I ſhall take it for granted, that generally no one ought to be puniſhed for any of the above-mentioned offences, without being called upon to anſwer for himſelf, and having liberty to *traverſe* the matters alledged againſt him: it is true, indeed, that it is generally holden, that no *traverſe* can be taken againſt *a preſentment* by a juſtice of peace of his own knowledge, as to the want of repair; yet this opinion ſeems juſtly queſtionable, for the reaſons alledged in the ſeventy-ſecond ſection of this chapter. N. B. This obſervation was applied to the former ſtatutes upon this ſubject.

Sect. 226. However, it is certain, that in all other caſes, whoever is indicted or preſented in any court, except a court-leet, for any offence relating to the highways, may traverſe the whole matter alledged againſt him in ſuch indictment or preſentment.

Sect. 227. But it ſeemeth to be agreed, that he who is preſented for ſuch an offence in a court-leet, can only traverſe it ſo far as it concerns his freehold, as by charging him with being bound to ſuch repairs in reſpect of the tenure of his lands, &c. for which purpoſe it is certain that he may remove it by a *certiorari* into the king's bench, and there traverſe it. 5. H. 7. 4. Dyer 14. Finch 386. Rex *v.* Rouſſel, 1. Term Rep.

Sect. 228. Alſo there is no doubt, but that after conviction, or upon a demurrer or confeſſion, any one may take exceptions to any ſuch indictment or preſentment in any court for the want of legal form; but the Court in diſcretion will very rarely ſuffer a man to take ſuch exceptions Anderſon 234. 1. Keble 256. 291. 829. 2. Keble 715. 728.

ceptions before such conviction or confession, without a certificate and affidavit that the ways are in good repair.

THEREFORE, for the better understanding in what cases it may be safe to demur to, or confess *an indictment* or *a presentment* of this kind, I shall lay down the following rules concerning them.

(*a*) 2. R. Abr. 81. Palmer 420. (*b*) 2. Keble 715. 728. 3. Keble 89. 644. Vide 4. Burr. 2091. Lucas 383. Palmer 389. 2. Roll. 412. B. R. H. 316.

Sect. 229. I. That it is (*a*) safest in every such indictment to shew both the place *from* which, and also the place *to* which, the way supposed to be out of repair doth lead; yet exceptions for want of such certainty have sometimes been (*b*) disallowed; however it seems certain, that there is no necessity to shew (*c*) that a highway leads to a market town, because every highway leads from town to town.

(*c*) where an objection of this kind is disallowed. 1. Brownl. 9.

(*d*) 3. Keble 644. (*e*) 2. R. Abr. 81. Cowp. 111.

Sect. 230. II. That it is necessary (*d*) in every such indictment expressly to shew *in* what place the nusance complained of was done, for which (*e*) cause an indictment for stopping a way *at D.* leading *from D.* to *C.* is not good; for it is impossible that a way leading from *D.* should be in *D.* and no other place is alledged.

Rex *v.* Gamlingay, 3. Term Rep. 316.

Sect. 231. III. So also it hath been adjudged, that an indictment against the parish of *B.* for not repairing a road leading from *A.* to *B.* is exclusive of *B.* and therefore bad, and not aided by a subsequent allegation, "that a certain "part of the same highway situate *in B.* is in decay, &c."

Stra. 181. Cowp. 111.

Sect. 232. IV. So also in a presentment the highway must be alledged to lie in the parish, otherwise the parish is not bound to repair.

Stra. 44. 1. H. Bl. Rep. 351. Sayer 119.

Sect. 233. V. But in an indictment for a nusance, it is not necessary to mention the *termini* of a highway. Also if there be two vills in a parish, it is not necessary in an indictment for a nusance to shew in which vill the nusance lies.

Cro. Jac. 324. Latch 183.

Sect. 234. VI. That every such indictment ought also certainly to shew to what part of the highway the nusance did extend, as by shewing how many foot in length, and how many foot in breadth it contained, or otherwise the defendant will neither know of the certainty of the charge against which he is to make his defence, neither will the Court be able from the record to judge of the greatness of the

the offence, in order to aſſeſs a fine anſwerable thereunto; and upon this ground it hath been adjudged, that an indictment for ſtopping a certain part of the king's way at *K.* is naught, for the uncertainty thereof. 2. R. Abr. 80. 81.

Sect. 235. VII. Alſo it hath been reſolved, that the place wherein ſuch a nuſance is alledged, is not ſufficiently aſcertained in ſuch an indictment by ſhewing that it contained ſo many foot in length, and ſo many in breadth, by eſtimation. 2. R. Abr. 81.

† *Sect.* 236. VIII. An indictment for a nuſance in laying ſoil in a highway is not bad for want of the length and breadth of the nuſance being ſet out. Nor for a nuſance in digging two grips or ditches in a common footway. Nor for a nuſance that a certain highway and bridge are in a ruinous condition. Sayer 98. 167. 301.

Sect. 237. IX. That every ſuch indictment muſt ſhew, that the way wherein a nuſance is alledged is a way common to all the king's people: for which cauſe it hath been reſolved, that an indictment for a nuſance to a (*a*) horſeway without adding that it is a highway, is naught. Salkeld 359. 6. Modern 255. Contra, Sayer 168, 169. (*a*) C. Eliz. 63.

Sect. 238. X. And upon the ſame ground it ſeemeth alſo, that an indictment for a nuſance to a common footway to the church of *D.* for (*b*) all the pariſhioners of *D.* is not good; yet it (*c*) ſeems, that if thoſe laſt words, *viz.* "for all pariſhioners of *D.*" had been omitted, ſuch an indictment might be maintained. (*b*) See 2. R. Abr. 83. 1. Ventris 208. Popham 206. 2. Keble 728. (*c*) 1. Vent. 208. 3. Keble 28.

† *Sect.* 239. XI. That it is not neceſſary to ſay that it is a highway for this or that particular kind of carriage; becauſe if it is ſtated to be "a common highway," it ſhall be intended a highway for all manner of things. B. R. H. 316.

† *Sect.* 240. XII. That in pleading a public highway, it is ſufficient to ſay, "that before and at the ſaid time "when, &c. there was, and of right ought to have been, a "certain common public highway, leading, &c. for all the "liege ſubjects, &c. to go, return, paſs, and repaſs, on foot "and on horſeback, and with their cattle and carriages at "all times of the year, &c." without alledging that it had been a highway from *time immemorial.* Aſpindal *v.* Brown, 3. Term Rep. 265.

Sect. 241. XIII. That it is not ſafe in an indictment againſt a common perſon for not repairing a highway, which he ought to have done in reſpect of the tenure of certain

certain lands, barely to say that he was bound to repair it *ratione tenuræ terræ*, without adding (*d*) *suæ* (10).

(*d*) Noy 93. 3. Keble 855.

(10) If a man be charged to repair *ratione tenuræ*, he may throw it upon the parish by the general issue. Stra. 184. And it hath been held, upon consideration, that *ratione tenuræ* is sufficient without *suæ*. Strange 187.

† *Sect.* 242. XIV. So also an indictment against a particular division of a parish, for not repairing a common highway, stating that the inhabitants thereof, from time whereof the memory of man is not to the contrary, *ought to repair and amend*, is not sufficient; for the parish at large being bound of common right to repair, it ought to shew by what right the charge was laid on the particular division.

Rex *v.* Great Broughton, Burr. 2700. S. P. Rex *v.* Penderryn, 2. Term Rep. 513.

Sect. 243. XV. Also it is said, that in an indictment again a (*e*) bishop, &c. for not repairing a highway, in respect of certain lands, it ought to be shewn in what capacity he ought to repair it, because otherwise it cannot be known in what capacity the process is to be awarded against him.

(*e*) 3. Keb. 58. Vide Vent. 331. according. 2. Keble, 514. Raymond 182.

Sect. 244. XVI. That in every such indictment the fact alledged against the defendant must be expressed in such proper terms, that it may clearly appear to the Court to have been a nusance; and for this cause it hath been resolved, that a presentment for diverting a highway is not good, because a highway cannot be diverted, but must always continue in the same place where it was, howsoever it be obstructed, and a new way made in another place.

11. Modern 56. 1. Anderson 234. Popham 206.

Sect. 245. XVII. That an indictment against a man for stopping a highway in his own land, is good without laying the offence done *vi et armis*.

2. Roll. Abr. 79. 81.

Sect. 246. XVIII. Also it is said, that a presentment that a highway in such a place is decayed by the defaults of the inhabitants of such a town, is good without naming any person in certainty.

2. Roll. Abr. 79.

Sect. 247. XIX. But it hath been adjudged, that an indictment against particular persons must specially charge them every one; for which cause it hath been resolved, that an indictment against several for not repairing their streets, that they, *et eorum uterque*, did not repair them, is not good.

2. Roll. Abr. 81.

Sect. 248. XX. That the defendants ought not to plead *quod non debent reparare*, without shewing who ought.

1. Sid. 140. Carth. 213. 11. Mod. 273. 12. Mod. 13.

Sect.

Sect. 249. XXI. That the defendants ſhall not be diſcharged by ſubmitting to a fine, but *a diſtringas* ſhall go *in infinitum* till they repair. Salkeld 358. 6. Mod. 163.

† *Sect.* 250. XXII. That a plea of juſtification in treſpaſs, ſtating that a public highway led from another highway (leading from *A.* to *B.*), in, through, over, and along the *locus in quo*, to a certain other highway (leading from *C.* to *D.*), is well ſupported by evidence proving that the way in queſtion led from the *terminus a quo*, viz. the way leading from *A.* to *B.* over the *locus in quo*, to a different way called *E.* and *along that way* into the way leading from *C.* to *D.* the *terminus ad quem*. Rouſe *v.* Bardin, 1. H. Bl. Rep. 351.

† *Sect.* 251. XXIII. That in an action on the caſe for not repairing a private way, it is ſufficient to alledge that the defendant, by reaſon of his poſſeſſion of the ſaid cloſe called &c. is bound to repair the ſaid way, &c. Rider *v.* Smith, 3. Term Rep. 766.

† *Sect.* 252. XXIV. That if a pariſh be ſituate part in one county and the reſt in another county, and a highway lying in one part be out of repair, an indictment againſt the inhabitants of that part of the pariſh only is bad; for the indictment muſt be againſt the whole pariſh. Rex *v.* Clifton, 5. Term Rep. 498.

CHAP-

CHAPTER THE SEVENTY-SIXTH,

CONTINUED.

OF TURNPIKE ROADS.

THE turnpike roads of England are placed under the management and direction of certain bodies of truſtees, who are uſually named and appointed by the reſpective acts of parliament which are occaſionally paſſed for the purpoſe of making, repairing, and ſuſtaining the particular roads therein ſpecified. But the powers of theſe ſtatutes being confined to ſeparate and diſtinct objects, it was thought expedient to paſs ſome general laws which ſhould apply in common to all truſtees and turnpike roads in general, throughout the kingdom. Theſe laws I ſhall endeavour to comprize under the following particulars:

1. As to the appointment and authority of truſtees.

2. As to the conſtruction of weighing engines; the weight allowed; and tolls.

3. As to the regulation of carriages.

4. As to exemptions from toll.

5. As to ſtatute-duty and repairs.

6. As to materials for repairs.

7. As to nuſances.

8. As to ſubſcribers and mortgagees.

9. As to officers in general.

10. As to repairing altered roads.

11. How far the powers of the highway act may be adopted.

12. As to the modes of proceeding.

Truſtees, how to be qualified.

As to THE FIRST POINT, *viz.* the appointment and authority of truſtees.

† *Sect.* 1. It is recited, by 13. Geo. 3. c. 84. ſ. 44. (*a*) that many miſchiefs have ariſen from mean perſons acting in that capacity, in the execution of thoſe acts of parliament as have incautiouſly omitted to direct that truſtees ſhall be poſſeſſed of property to a certain value; it is therefore enacted, "That no truſtee "ſhall be qualified for that office, unleſs he ſhall, in his own "or his wife's right, be in the actual poſſeſſion or receipt of "the rents and profits of lands, tenements, or hereditaments, "of the clear yearly value of 40l. or poſſeſſed of or in-"titled to a perſonal eſtate worth 800l. or ſhall be heir "apparent to a landed eſtate of 80l. a-year; and unleſs (not "being ſuch heir apparent), he ſhall take and ſubſcribe the "oath in the act recited, before two or more of the truſtees "appointed by ſuch act; and if he ſhall preſume to act as "a truſtee, without being thus qualified, he ſhall forfeit 50l. "to any perſon who ſhall ſue for the ſame, who ſhall re-"cover, without any other proof or evidence that ſuch "perſon hath acted as a truſtee, except ſuch perſon ſhall "prove that he is qualified in the manner above-mentioned."

(*a*) By 21. Geo. 3. c. 20. this act is extended to all acts of parliament which have been made ſince, and which ſhall hereafter be made for the amending or repairing any particular turnpike roads in England.

No publican can be a truſtee.

† *Sect.* 2. By 13. Geo. 3. c. 84. ſ. 46. it is further enacted, "That no perſon who ſhall keep any victualling-"houſe, ale-houſe, or other houſe of public entertain-"ment, or who ſhall ſell any wine, cyder, beer, ale, ſpiri-"tous, or other ſtrong liquors, by retail, ſhall be capable "of acting as a truſtee, or of holding any place of truſt or "profit under the truſtees, or of collecting the tolls. But "no ſuch perſon ſhall be precluded from farming ſuch "tolls, provided he employs a perſon to collect them, who "ſhall not be under ſuch incapacity."

What ſhall be evidence of a truſtee.

† *Sect.* 3. And by 13. Geo. 3. c. 84. ſ. 64. "In all "caſes where any action ſhall be brought againſt any "truſtee, evidence of acting as ſuch, together with the act "of parliament by which he or they were appointed, or the "order, or a copy of the order for the appointment or "election, &c. ſhall be ſufficient proof of his being truſtee."

Their meetings regulated.

† *Sect.* 4. And by 13. Geo. 3. c. 84. ſ. 49. amended and explained by 18. Geo. 3. c. 63. "In all caſes where the "truſtees appointed by any act of parliament ſhall not meet "on the day appointed for their firſt meeting by any ſuch "act; or on any day appointed by adjournment; or have "not adjourned in the manner directed by any ſuch act; or "when the day appointed for the firſt meeting of the "truſtees has elapſed before the paſſing of any ſuch act;

"any

" any five or more of the truſtees appointed to execute ſuch " act ſhall and may, in any or either of the caſes aforeſaid, " cauſe notice under their hands to be affixed on all the " turnpike gates, which ſhall be then erected on the roads " for which they are truſtees; or if no turnpike gate ſhall " be then erected, ſhall cauſe the like notice to be affixed in " ſome conſpicuous place, in one of the market towns near " the roads directed to be repaired, and alſo ſhall publiſh in " ſome newſpaper circulated in that part of the country, at " leaſt *twenty days* before the intended meeting, appointing " the truſtees to meet at the place where the laſt preceding " meeting was appointed to be held; or at the place directed " for the firſt meeting of ſuch truſtees, if no preceding " meeting ſhall have been held; and the ſaid truſtees, when " met in purſuance of ſuch notice, ſhall and may carry ſuch " act or acts into execution, in the ſame and as full and " ample a manner, as if no ſuch neglect or omiſſion had " happened, or ſuch act had been paſſed previous to the " time appointed for the firſt meeting, and ſuch truſtees " had met accordingly."

† *Sect.* 5. But by 13. Geo. 3. c. 84. ſ. 50. it is provided, " That no meeting of ſuch truſtees ſhall be adjourned for " any longer time than three calendar months, from the " day on which ſuch adjournment ſhall be made; and that " no buſineſs ſhall be done at any meeting before ten in the " forenoon; and no adjournment ſhall be made to any hour " later than two in the afternoon, on which ſuch meeting " ſhall be appointed to be held; and that every act agreed " upon at ſuch meeting ſhall be ſigned, at the meeting, by a " competent number of truſtees, or otherwiſe ſuch meeting, " adjournment, and act reſpectively, ſhall be void." In what manner the meetings ſhall be adjourned.

† *Sect.* 6. By 18. Geo. 3. c. 63. ſ. 1. " Where the truſtees " ſhall not meet on the day appointed for their firſt meeting, " or on any day appointed by adjournment, or ſhall " not adjourn, or when the day appointed for the firſt " meeting hath elapſed before the paſſing of the act; any " five or more of them may cauſe notice under their hands " to be affixed on all the turnpike gates on the ſaid road; " or if none ſhall be then erected, they may cauſe the like " notice to be affixed in ſome conſpicuous place in one of " the market towns near the road, and alſo to be publiſhed " in ſome newſpaper circulated in that part of the country, " at leaſt twenty days before, appointing the truſtees to " meet at the place where the laſt preceding meeting was " appointed to have been held, or at the place directed for " the firſt meeting, if no preceding meeting hath been held."

Proceedings are valid, although the truſtees may not have been regularly appointed.

† *Sect.* 7. By 25. Geo. 3. c. 82. ſ. 7. "And whereas "ſome perſons may have acted as truſtees in the execution "of certain turnpike acts without having been regularly "appointed, and doubts may ariſe whether the proceedings "of the truſtees had at any meetings where ſuch perſons "have acted are ſtrictly legal, for obviating whereof it is "enacted, that all proceedings of truſtees for any turnpike "road, at meetings where any ſuch perſons have acted, "ſhall be as good, valid, and effectual in the law, as if ſuch "perſon had been duly appointed; and that no ſuch "perſon ſhall be liable to be proſecuted for having ſo "acted, provided that at the time he ſo acted as a truſtee, "he had an eſtate ſufficient to qualify him, and had alſo "taken the oath required by perſons acting as truſtees."

If they exceed their power in erecting gates, the juſtices may order the gates to be removed.

† *Sect.* 8. And by 13. Geo. 3. c. 84. ſ. 51. it is further enacted, "That if the truſtees abuſe or exceed their power, "by erecting or continuing any gate or turnpike, where "they have not any power by virtue of any act, the juſtices "of the limit where any ſuch gate or turnpike ſhall be "erected or continued, in their general quarter-ſeſſions "aſſembled, upon complaint of ſuch abuſe or exceſs of "power in ſuch truſtees, ſhall in a ſummary way hear and "determine the ſame, and thereupon order the ſheriff of "the county, who is hereby authorized and required to "execute ſuch order, to remove the ſame."

May adminiſter oaths. Vide highway act, ſect. 78 Ante, p. 217.

† *Sect.* 9. And by 13. Geo. 3. c. 84. ſ. 84. "Where any "oath is required to be taken by this act, the juſtices of any "limit, or the truſtees of any turnpike road, as the caſe may "be, according to their ſeveral juriſdictions, are empowered "to adminiſter the ſame."

Truſtees may farm out the tolls

† *Sect.* 10. By 13. Geo. 3. c. 84. ſ. 31. it is recited, "that there are no powers given to the truſtees to let or farm out the tolls ariſing upon turnpike roads, and in many caſes where the particular acts have given ſuch power, they are not executed in the moſt beneficial manner for ſuch roads:" and therefore enacted, "That any ſeven truſtees, "at a public meeting, may let to farm the tolls of the "ſeveral gates erected upon their reſpective turnpike roads, "viz. The truſtees ſhall cauſe notice to be given of the "time and place for letting the ſame at leaſt one month "before the day appointed for that purpoſe, by fixing the "ſame upon every toll-gate belonging to ſuch turnpike "road, and alſo upon the market croſs of the market town "neareſt to the place where the ſaid tolls are to be let, and "alſo in ſome public newſpaper circulated in that part of "the country, and ſpecifying in every ſuch notice the ſum "which

" which the ſaid tolls produced in the preceding year, clear of the ſalary for collecting the ſame; and that they will let ſuch tolls by auction to the beſt bidder, on his producing ſufficient ſureties for payment of the money monthly, or quarterly, as the truſtees ſhall require; and that they will be put up at the ſum which they were let for or produced in the preceding year, clear of the ſalary of the collector." under particular directions and reſtrictions.

† *Sect.* 11. And by 13. Geo. 3 c. 84. ſ. 31. " The truſtees ſhall provide a glaſs, with ſo much ſand in it as will run from one end of it to the other in one minute; which glaſs, at the time of letting the ſaid tolls, ſhall be ſet upon a table, and immediately after every bidding the glaſs ſhall be turned, and as ſoon as the ſand is run out, it ſhall be turned again, and ſo for three times, unleſs ſome other bidding intervenes: and if no other perſon ſhall bid until the ſand ſhall have run through the glaſs for three times, the laſt bidder ſhall be the farmer or renter of the ſaid tolls, and ſhall forthwith enter into a proper agreement for the taking thereof, and paying the money at the times ſpecified in ſuch notice, or as ſhall be agreed upon between him and the ſaid truſtees. And in caſe no bidder ſhall offer, the truſtees may appoint a collector of ſuch tolls, or fix ſome future day for the letting thereof, as they ſhall judge moſt proper, upon giving ſuch notices as aforeſaid, and ſhall and may in that caſe put them up at ſuch ſum as they ſhall think fit." The method by which they ſhall farm out the tolls.

† *Sect.* 12. And by 13. Geo. 3. c. 84. ſ. 71. " If the farmer or renter of ſuch tolls ſhall take a greater or leſs toll than is authorized and directed by this or the particular turnpike act, he ſhall, for every offence, forfeit five pounds—and every other gatekeeper ſhall forfeit forty ſhillings." Penalty for taking more or leſs toll.

† *Sect.* 13. And by 13. Geo. 3. c. 84. ſ. 29. it is further enacted, " That truſtees, or any ſeven or more, at a meeting for the purpoſe, of which one calendar month notice ſhall be given in writing, to be affixed on the turnpike-gates, or circulated in ſome newſpaper, may leſſen or reduce all or any of the tolls on the roads for which they are truſtees, for ſuch time as they ſhall think fit, and afterwards, at a meeting as aforeſaid, may, if they ſhall ſee occaſion, advance all or any of the tolls ſo leſſened, to any ſum not exceeding the ſeveral rates granted by the acts. But if the whole money borrowed on ſuch tolls is not diſcharged, no ſuch alterations ſhall be made, without Truſtees may reduce the tolls at any public meeting.

" the conſent of four fifths of the creditors, for ſuch ſums " as ſhall remain due on the reſpective tolls."

May direct proſecution for nuſances.

† *Sect.* 14. And by 13. Geo. 3. c. 84. ſ. 47. it is further enacted, " That the truſtees, or any five or more, at a public " meeting, may direct proſecutions by indictment againſt " any offender for any nuſance done, committed, or con- " tinued, in or upon any turnpike road under their care " reſpectively, at the expence of the revenues belonging to " ſuch roads, to be allowed by the truſtees, or any five or " more, at ſome ſubſequent meeting; provided ſuch offen- " der ſhall confeſs, or the truſtees can ſupport the proſe- " cution by one witneſs who ſhall prove the fact."

May appoint a toll-keeper.

† *Sect.* 15. And by 13. Geo. 3. c. 84. ſ. 54. " Any two " or more truſtees, upon the death of any toll-gatherer or " gate keeper, may nominate and appoint another, until " the next meeting of the truſtees, who ſhall poſſeſs all the " powers and privileges of his predeceſſor."

May agree with perſons liable to repair highways.

† *Sect.* 16. And by 13. Geo. 3. c. 84. ſ. 62. " The " truſtees may agree with any perſon liable by tenure, " incloſure, or otherwiſe, to repair certain highways, which " have become turnpike roads, for the repair thereof, in " ſuch manner as they ſhall think fit; and may contribute " ſo much, on their parts, to the repair thereof, out of the " tolls ariſing from ſuch turnpike road, or out of the " ſtatute-duty belonging to the ſame, as they ſhall think " juſt and reaſonable."

Shall hang up tables at toll-gates, &c.

† *Sect.* 17. And by 13. Geo. 3. c. 84. ſ. 66. it is further enacted, " That the truſtees of every turnpike road in " *England* ſhall put up, and afterwards continue upon every " toll-gate within their reſpective diſtricts, a table of all " the tolls payable at every ſuch gate, diſtinguiſhing each " toll and the different ſorts of carriages for which they are " to be paid; and alſo a table of the weights allowed for " each carriage, with the loading thereof, in ſummer and " winter. And the ſaid truſtees ſhall from time to time " exerciſe and inſpect every weighing engine on their re- " ſpective roads, to ſee that the ſame, with their weights, " are in ſuch good order as to weigh the carriages and load- " ing with accuracy."

Truſtees to order direction-poſts or ſtones to be put up, &c.

† *Sect.* 18. By 13. Geo. 3. c. 84. ſ. 41. it is alſo enacted, " That the truſtees appointed to execute any act of parlia- " ment made for the repair of any turnpike road, ſhall direct " the ſurveyor of every ſuch turnpike road, where ſeveral " highways meet, and there is no ſufficient direction-poſt

" or

" or ſtone already fixed or erected, forthwith to erect, or " cauſe to be erected or fixed, in the moſt convenient place " where ſuch ways meet, a ſtone or poſt, with an inſcription " thereon in large letters, containing the name of, and " diſtance from, the next market-town or towns, or other " conſiderable place or places to which the ſaid highways " reſpectively lead; and alſo at the ſeveral approaches or " entrances to ſuch parts of any highways as are ſubject to " deep or dangerous floods, graduated ſtones or poſts, de- " noting the depth of water in the deepeſt part of the ſame, " and likewiſe ſuch direction-poſts or ſtones as the ſaid " truſtees ſhall judge to be neceſſary, for the guiding of " travellers in the beſt and ſafeſt track through the ſaid " floods or waters; and alſo ſhall order the ſaid ſurveyor to " erect mile-ſtones or poſts upon ſuch turnpike road, with " proper inſcriptions and figures thereon, denoting the " names and diſtances from the principal towns or places on " each reſpective road, and from time to time to repair ſuch " ſtones and poſts, and keep and continue legible the in- " ſcriptions thereon reſpectively; and the ſaid ſurveyor " ſhall be reimburſed the expences of providing, erecting, " repairing, and continuing the ſame reſpectively, out of the " tolls and duties granted by ſuch acts reſpectively; and " in caſe any ſurveyor ſhall, by the ſpace of three months " after ſuch direction to him or them given, neglect or " refuſe to cauſe any ſuch ſtone or poſt to be fixed or re- " paired as aforeſaid, every ſuch offender ſhall forfeit the " ſum of twenty ſhillings."

As to THE SECOND POINT, *viz.* the conſtruction of weighing-engines, the weight allowed, and additional toll.

† *Sect.* 19. It is further enacted by the ſaid ſtatute, par. 1. " That all truſtees appointed by any act of parliament for " any turnpike road in *England*, or any five or more of them, " at ſome public meeting, if they ſhall think proper, at as " many turnpike gates as they ſhall erect (1) for the re- " ceiving toll; or upon any part of the road within their " reſpective juriſdictions, and at ſuch a diſtance as they " ſhall think expedient, ſhall and may cauſe to be erected " a crane, machine, or engine, proper for weighing of carts, " waggons, or carriages, conveying of any goods or mer- " chandize whatever; and by writing ſigned by them, or " any five or more of them, ſhall and may order every ſuch " carriage which ſhall paſs loaded through every ſuch gate " or bar, to be weighed with the loading thereof."

May erect weighing engines.

(1) But toll-gates ought not to be erected in the middle of great towns, ſo as to obſtruct the neceſſary intercourſe, 1. Burr. 377.

† *Sect.* 20. But by 13. Geo. 3. c. 84. ſ. 34. it is provided, " That no toll-gate ſhall be erected on the ſide of any turn- " pike road, unleſs ordered by the truſtees at a meeting, of

" which twenty-one days public notice ſhall have been " given in writing, affixed upon all the toll-gates erected on " ſuch roads, and alſo in ſome public newſpaper circulated " in that part of the country, ſpecifying the place where " ſuch ſide gate is propoſed to be erected, and unleſs nine " truſtees at leaſt (being a majority of thoſe preſent) ſhall " ſign the ſaid order at ſuch meeting; and that no perſon " ſhall be liable to pay toll at any toll gate erected, or to be " erected, acroſs or on the ſide of any turnpike road, or be " ſubject to any penalty for any carriage, horſe, or beaſt, " which ſhall only croſs ſuch road, and ſhall not paſs above " one hundred yards thereon, except over ſome bridge " erected at a conſiderable expence by the truſtees of ſuch " turnpike road."

The burthen with which carriages are allowed to paſs.

+ *Sect.* 21. And by 13. Geo. 3. c. 84. ſ. 1. it is further enacted, " That the truſtees ſhall take, over and above the " tolls, a certain ſum for every one hundred and twelve " pounds which every ſuch waggon or cart, together with " the loading thereof, ſhall weigh over and above the following " weights: To every four-wheel carriage having fellies of " ſixteen inches, eight tons in ſummer, and ſeven in win- " ter.—To every waggon or wain having the axletrees " thereof of ſuch different lengths that the diſtance from " wheel to wheel of the nearer pair of the ſaid wheels be " not more than four feet two inches, to be meaſured at the " ground, and that the diſtance from wheel to wheel of the " other pair thereof be ſuch, that the fore and hind wheels " of ſuch waggons and wains ſhall roll only one ſingle " ſurface or path of ſixteen inches wide at the leaſt, on each " ſide of the ſaid waggons or wains, and having the fellies " thereof of the breadth of nine inches from ſide to ſide at " the bottom or ſole thereof, ſix tons ten hundred in ſum- " mer, and ſix tons in winter.—To every waggon or four- " wheeled carriage having the ſole or bottom of the " fellies of the wheels of the breadth of nine inches, ſix tons " in ſummer, and five tons ten hundred in winter.—To " every cart having the fellies of the ſame dimenſions, three " tons in ſummer, and two tons fifteen hundred in winter. " —To every waggon having the ſole or bottom of the " fellies of the wheels of the breadth of ſix inches, four tons " five hundred in ſummer, and three tons fifteen hundred " in winter.—And to every ſuch waggon ſo conſtructed as " to roll and actually rolling a ſurface of eleven inches, by " the wheels thereof, five tons ten hundred in ſummer, and " five tons in winter.—To every cart having fellies of the " wheels of the ſame dimenſions, two tons twelve hundred " in ſummer, and two tons ſeven hundred in winter.—To " every waggon having the ſole or bottom of the fellies of

" the

" the wheels of leſs breadth than ſix inches, three tons ten " hundred in ſummer, and three tons in winter.—And to " every cart having the fellies of the wheels of the ſame " dimenſions, one ton ten hundred in ſummer, and one " ton ſeven hundred in winter.—And for the ſeveral pur- " poſes aforeſaid, it ſhall be deemed ſummer from the " 1ſt *May* to 31ſt *October*, both incluſive, and winter from " 1ſt *November* to 30th *April*, both incluſive."

The additional toll to be paid for extra weight.

† *Sect.* 22. By 14. Geo. 3. c. 82. " All truſtees, or any " five or more of them, are impowered to take and receive " over and above the tolls already granted, the following " ſums of money: For every one hundred and twelve pounds " which any waggon, cart, or carriage, together with the " loading, ſhall weigh at any weighing engine, over and " above the weights allowed as above, viz.—For the firſt " and ſecond hundred weight, three-pence each.—For every " hundred weight of ſuch over weight above two hundred " weight, and not exceeding five hundred weight, ſix- " pence.—For every hundred weight of ſuch over weight " above five hundred weight, and not exceeding ten hundred " weight, two ſhillings and ſix-pence; for every hundred " weight of ſuch over weight above ten hundred weight, " and not exceeding fifteen hundred weight, five ſhillings.— " For every hundred weight of ſuch over weight above " fifteen hundred weight, twenty ſhillings. The money " ariſing from ſuch additional tolls to be applied to the " roads where they are collected. But the truſtees within " ten miles of *London*, *Weſtminſter*, and *Southwark*, are " empowered at their general or quarterly meetings to " lower the additional tolls hereby directed to be taken as " aforeſaid, as to them ſhall ſeem fit."

Truſtees, &c. may perſonally cauſe carriages to return to the weighing engine.

† *Sect.* 23. And by 13. Geo. 3. c. 84. ſ. 9. it is further enacted, " That any truſtee, creditor, clerk, treaſurer, or " ſurveyor, on ſuſpicion of fraud, may cauſe any carriage " liable to be weighed which ſhall have paſſed through any " toll-gate where ſuch weighing engine ſhall be erected, and " ſhall not have paſſed above three hundred yards beyond " ſuch toll-gate, to return to ſuch weighing engine, and be " then weighed with the loading which paſſed through ſuch " gate in the preſence of the ſaid truſtee, creditor, clerk, " treaſurer, or ſurveyor, upon requiring the driver thereof " to drive back to ſuch weighing engine, and upon tender- " ing him one ſhilling for ſo doing, which ſhall be returned " to the perſon paying the ſame, if the weight ſhall be " found exceſſive."

† *Sect.*

† *Sect.* 24. And by 13. Geo. 3. c. 84. ſ. 2. "Every "toll-gate keeper, where ſuch engine ſhall be erected, ſhall "weigh all ſuch carriages as he ſhall ſuſpect to be loaden "with greater weights, and receive the additional tolls, "upon pain of forfeiting five pounds."

Truſtees ſhall make places for the carriages to turn.

The names of the truſtees, &c. ſhall be affixed in the houſe.

Driver refuſing to return, 40s. &c.

† *Sect.* 25. And by 13. Geo. 3. c. 84. ſ. 4. it is further enacted, "That the truſtees ſhall cauſe the ſurveyors to "make convenient places for turning ſuch carriages where "ſuch weighing engine ſhall be erected, within three hun-"dred yards of ſuch toll-gate, on each ſide thereof, if the "ground will admit of the ſame. And a liſt of the names "of all the truſtees, creditors, the clerk, treaſurer, and ſur-"veyor, ſhall be put up in the houſe where ſuch weighing "engine ſhall be placed, to be inſpected by the owner or "driver of every ſuch carriage: and if the driver refuſe to "return, he ſhall forfeit forty ſhillings, and any peace-"officer or other perſon being preſent upon ſuch refuſal, "may drive ſuch carriage back, in order to be weighed as "aforeſaid."

Carriages exempted from being weighed.

† *Sect.* 26. But by 14. Geo. 3. c. 82. "No waggon, cart, "or carriage employed in huſbandry, or carrying only "manure or lime for the improvement of land, as hay, "ſtraw, fodder, or corn unthreſhed (excepting hay or ſtraw "carried for ſale), ſhall be weighed at any weighing en-"gine."

Juſtices upon complaint made, may order weighing engines to be erected where they think proper.

† *Sect.* 27. And by 13. Geo. 3. c. 84. ſ. 7. it is provided, "That the juſtices at general quarter-ſeſſions, upon com-"plaint by any juſtice or two creditors, or two truſtees, "that ſuch turnpike road is much damaged by exceſſive "weights, and that no engine hath been erected upon the "ſame, may ſummon the clerk, ſurveyor, and treaſurer of "ſuch turnpike road to their next general quarter-ſeſſions, "to ſhew cauſe why the ſame ſhould not be erected at or near "ſuch gates, upon ſuch turnpike roads as ſhall be deſcribed "in ſuch ſummons; and if at ſuch ſubſequent ſeſſions the "ſaid clerk, ſurveyor, and treaſurer, ſome or one of them, "ſhall not appear, or appearing ſhall not ſhew ſufficient "cauſe againſt the erecting thereof, the ſaid juſtices, at ſuch "quarter-ſeſſions, may order one or more weighing engine "at ſuch place; a copy of which order ſhall be forthwith "delivered to the clerk of ſuch road; and the truſtees, at "their next meeting, after their clerk ſhall have been ſerved "with ſuch copy of the order, may contract with proper "perſons for the making and erecting the ſame; and the "treaſurer ſhall pay the expences thereof out of the money "which

" which ſhall then be, or next come into his hands, from " the tolls ariſing upon ſuch turnpike road."

† *Sect.* 28. By 13. Geo. 3. c. 84. ſ. 8. it is alſo provided, " That when turnpike roads meet at or near the ſame place, " the truſtees reſpectively ſhall fix upon ſome convenient " place to erect a weighing engine upon, which will accom- " modate all ſuch roads, and proportion the expences " thereof, and forfeitures at ſuch engine, amongſt all ſuch " turnpike roads." Where two or more roads meet, truſtees may erect one weighing engine to accommodate them.

† *Sect.* 29. And by 13. Geo. 3. c. 84. ſ. 9. " The truſtees " or their leſſee ſhall not make compoſition for tolls, in " reſpect of any carriage, or horſes, or beaſts of draught, " drawing the ſame, unleſs they have the fellies of the " wheels of the breadth of ſix inches, or more." Truſtees not to make compoſition for tolls, unleſs waggons, &c. have the fellies of the wheels of ſix inches broad.

† *Sect.* 30. And by 13. Geo. 3. c. 84. ſ. 10. " If any " perſon ſhall unload goods from any carriage (except ſuch " carriages as are before excepted) before the ſame ſhall come " to any turnpike gate or weighing engine, or ſhall load " upon ſuch carriage (except as aforeſaid), after the ſame " ſhall have paſſed any ſuch turnpike or weighing engine, " any goods, taken from any horſe, or other carriage be- " longing to, or hired, or borrowed by the ſame waggoner " or carrier, in order to avoid the payment of the additional " duties, as aforeſaid; and if any perſon ſhall ſo unload, in " order to carry conſiderable quantities of goods through " any turnpike gate, in one and the ſame day, and thereby " pay leſs toll at ſuch turnpike gate than would have been " paid if ſuch goods had not been ſo unloaden, on conviction " before one juſtice, upon the oath of one witneſs, he ſhall " forfeit five pounds. And each and every driver, not being " the owner, who ſhall ſo offend, on conviction, as afore- " ſaid, ſhall be committed to the houſe of correction for one " month." Five pounds penalty on unloading goods before coming to any gate or weighing engine.

† *Sect.* 31. And by 13. Geo. 3. c. 84. ſ. 11. " If the " owner of any carriage, or the driver travelling on any " turnpike road where any toll-gate or weighing engine is " erected, ſhall drive or turn out of the ſame into any other " road, in order to avoid being weighed, or paying toll, and " ſhall afterwards proceed with ſuch carriage into and on " the ſame turnpike road, every ſuch owner or driver, con- " victed as aforeſaid ſhall forfeit, if he be the owner, any " ſum not exceeding five pounds, nor leſs than twenty ſhil- " lings; and if he be the driver, and not the owner, not " ex- Penalty for avoiding the weighing engine.

"exceeding fifty ſhillings, nor leſs than ten ſhillings, for "every ſuch offence."

As to THE THIRD POINT, *viz.* The regulation of carriages.

† *Sect.* 32. It is enacted by 13. Geo. 3. c. 84. ſ. 13. "That no four-wheeled carriage having the bottom of the "fellies nine inches broad, ſhall be drawn on any turnpike "road with more than eight horſes; nor any two-wheeled "carriage having wheels of the breadth aforeſaid, with "more than five horſes; and the horſes ſhall draw in pairs "(except an odd horſe in any team, and except where the "number of horſes ſhall not exceed four). And alſo, that "no four-wheeled carriage having the bottom of the fellies "of the breadth of ſix inches, ſhall be drawn in any turnpike road with more than ſix horſes; and that no two-"wheeled carriage having wheels of the breadth laſt-mentioned, ſhall be drawn with more than four horſes; and "no four-wheeled carriage having fellies leſs than ſix "inches, with more than four horſes; and no two-wheeled "carriage having fellies leſs than ſix inches, with more "than three horſes; and the owner ſhall forfeit five pounds, "and the driver, not being the owner, twenty ſhillings, for "every offence, to any perſon who ſhall ſue for the ſame."

Vide Burrow 2258.

† *Sect.* 33. But by 13. Geo. 3. c. 14. it is provided, "That all carriages moving upon rollers of ſixteen inches "on each ſide thereof, with flat ſurfaces, may be drawn "with any number of horſes, or other cattle."

Rollers with flat ſurfaces may be drawn with any number of horſes.

† *Sect.* 34. And by 14. Geo. 3. c. 81. ſ. 5. "All ſuch "carriages ſhall only pay half the tolls directed by this "act."

† *Sect.* 35. By 13. Geo. 3. c. 84. ſ. 15. "No proſecution "ſhall be commenced before a juſtice by information, for "any forfeiture incurred by the owner or driver having a "greater number of horſes, unleſs ſuch information be laid "within three days after the offence committed; and no "action, unleſs commenced within one calendar month; "and neither ſuch information or action, unleſs notice be "given by the informer to the driver on the day the offence "ſhall be committed, of an intention to complain of ſuch "offence: and if the offender lives ſo remote as to make it "inconvenient to ſummon him, the juſtice may diſmiſs the "complaint, and leave the informer to his remedy by action "at law."

Proſecutions not to be commenced, unleſs information be laid within three days after the offence is committed.

† *Sect.*

† *Sect.* 36. And by 13. Geo. 3. c. 84. ſ. 17. it is further enacted, "That if any perſon ſhall take off any horſe, or "other beaſt of draught, from any carriage, or ſhall alter "the diſtance of the wheels before the ſame ſhall come to "any of the turnpikes, with intent to avoid any toll, for- "feiture, or penalty, for drawing with a greater number of "horſes, or beaſts of draught, than is hereby allowed, on "conviction before one juſtice, upon the oath of one wit- "neſs, ſhall forfeit five pounds."

Penalty for taking off horſes, &c.

† *Sect.* 37. And by 13. Geo. 3. c. 84. ſ. 18. it is further enacted, "That if it ſhall appear to the truſtees, or any ſeven "of them, at any of their public meetings, by the oath of "one witneſs experienced in levelling, that any part of the "riſe of any hill ſhall be more than four inches in a yard, "they may allow ſuch number of horſes as they ſhall judge "neceſſary, not exceeding ten, for waggons with nine-inch "wheels, nor ſix, for carts with nine-inch wheels, and not "exceeding ſeven, for waggons with ſix-inch wheels, nor "five, for carts with ſix-inch wheels; and not exceeding "five, for waggons with wheels of leſs breadth than ſix "inches, nor four, for carts with wheels of leſs breadth than "ſix inches. And in caſe it ſhall appear to the ſaid truſtees, "in manner aforeſaid, that the whole riſe of any hill taken "together ſhall be more than four inches in a yard upon an "average, the ſaid truſtees, or any ſeven of them, may allow "ſuch number of horſes as they ſhall think fit to be uſed "in ſuch waggons and carts reſpectively, for the purpoſe "only of drawing the ſame up ſuch hill or hills as afore- "ſaid, the length and extent of ſuch hill or hills to be ſpe- "cified in ſuch order of allowance, and the termination at "each end thereof to be marked by a poſt or ſtone, to be "erected at ſuch reſpective boundaries; and the ſaid order "of allowance ſhall be certified by the ſaid truſtees, or their "clerk, to the next general quarter-ſeſſions, of the limit "within which ſuch hill or hills ſhall reſpectively be "ſituated: and if the facts ſhall be proved upon the oath "of one witneſs to the ſatisfaction of the bench, the ſaid "order ſhall be confirmed and filed, or otherwiſe vacated "and quaſhed: and from and after ſuch confirmation and "filing, no perſon ſhall be liable to any penalty or forfeit- "ure for uſing ſuch number of horſes as ſhall be ſo allowed "in drawing any waggon or cart up ſuch hill or hills re- "ſpectively; and the ſaid juſtices, at any ſubſequent quar- "ter-ſeſſions of the peace, may re-conſider the ſaid order "of allowance, and to diſcharge the ſame if they think "fit."

They may allow ſuch number of horſes as they think fit, up hills riſing more than four inches in a yard, to be ſpecified in the order of allowance.

† *Sect.*

Exemption with reſpect to deep ſnow or ice.

† *Sect.* 38. But by 13. Geo. 3. c. 84. ſ. 19. it is provided, "That if it ſhall appear, upon the oath of credible witneſſes, to the ſatisfaction of any juſtice or juſtices of the peace, or of any court of juſtice, authorized to enforce the execution of this act, that any waggon, cart, or carriage could not, by reaſon of deep ſnow or ice, be drawn with the reſpective weights, and by the number of horſes or beaſts of draught hereby reſpectively allowed; then, and in every ſuch caſe, it ſhall and may be lawful for ſuch juſtice or juſtices of peace, or court reſpectively, and they are hereby reſpectively required to ſtop all proceedings before them reſpectively, for the recovery of any penalty or forfeiture which may have been incurred by drawing with a greater number of horſes or beaſts of draught than are hereby allowed; any thing herein contained to the contrary notwithſtanding."

Narrow-wheeled waggons not to be drawn by horſes in pairs.

† *Sect.* 39. And by 13. Geo. 3. c. 84. ſ. 20. it is further enacted, "That no carriage having the bottom of the fellies of leſs breadth than nine inches, ſhall paſs upon any turnpike road drawn by horſes in pairs, other than and except ſuch carriages having the fellies of ſix inches, as ſhall be authorized to be drawn in any other manner by the order of truſtees, within their diſtrict, made at a public meeting, conſiſting of ſeven truſtees or more, which order the ſaid truſtees may revoke at any ſubſequent meeting, and afterwards make a new one fixed in writing upon every toll gate within ſuch diſtrict, and except carriages drawn by two horſes only."

† *Sect.* 40. And by 13. Geo. 3. c. 84. ſ. 59. it is alſo enacted, "That the juſtices of the peace for *Wales*, at their general quarter-ſeſſions, to be held in the week after *Michaelmas*, may licenſe an increaſe of the number of horſes to be employed in drawing carriages on turnpike roads within their reſpective juriſdictions, over and above the number hereinbefore limited, if the ſtate of the roads make ſuch an increaſe neceſſary, which order they may revoke, alter, or vary, at any ſubſequent *Michaelmas* ſeſſion."

For the manner in which they are to be marked vide ante, p. 210.

† *Sect.* 41. And by 13. Geo. 3. c. 84. ſ. 21. it is further enacted, "That in caſe any perſon ſhall drive any carriage not being marked according to the directions of this act, or drawn by more than the number of horſes or beaſts of draught hereby reſpectively authorized, any conſtable, tythingman, ſurveyor, or other perſon, may apprehend and take ſuch perſon before a juſtice where the offence

"ſhall

" ſhall be: and, on conviction by confeſſion, or the oath of " one witneſs, ſhall forfeit not exceeding five pounds, nor " leſs than ten ſhillings."

† *Sect.* 42. And by 13. Geo. 3. c. 84. ſ. 2. it is further enacted, " That the truſtees appointed by any act of parli- " ament for repairing particular roads, or any five or more, " within their reſpective diſtricts, at the firſt meeting after " this act, do mitigate, leſſen, and reduce the high and ex- " traordinary tolls impoſed by ſuch certain particular acts, " to an equality with the tolls and duties impoſed by this " act reſpectively."

Two oxen to be conſidered as one horſe.

† *Sect.* 43. By 13. Geo. 3. c. 84. ſ. 67. it is further enacted, " That in all carriages wherein oxen or neat " cattle ſhall be uſed, two oxen or neat cattle ſhall be con- " ſidered as one horſe, for all the purpoſes mentioned in " this act, or any particular turnpike act, with reſpect to " tolls or other things."

Name of the owner of every waggon, &c. uſed for hire, to be painted upon it.

† *Sect.* 44. By 13. Geo. 3. c. 84. ſ. 68. it is enacted, " That the owner of every waggon, wain, or cart, and alſo " of every coach, poſt-chaiſe, or other carriage, let to hire, " ſhall paint, or cauſe to be painted, upon ſome con- " ſpicuous part of his waggon, wain, or cart, and upon the " pannels of the doors of all ſuch coaches, poſt-chaiſes, or " other carriages, before the ſame ſhall be uſed upon any " turnpike road, his or her chriſtian and ſurname, and the " place of his or her abode, in large legible letters, and " continue the ſame thereupon, ſo long as ſuch waggon, " cart, coach, poſt-chaiſe, or other carriage, ſhall be uſed " upon any ſuch turnpike road; and the owner of every " common-ſtage waggon or cart, employed in travelling " ſtages from town to town, ſhall, over and above his or " her chriſtian and ſurname, paint, or cauſe to be painted, " on the part and in the manner aforeſaid, the following " words, COMMON STAGE WAGGON (or CART, as " the caſe may be); and every perſon uſing any ſuch car- " riage, as aforeſaid, upon any turnpike road, without the " names and deſcriptions painted thereon reſpectively, as " aforeſaid, or who ſhall paint, or cauſe to be painted, any " falſe or fictitious name, or place of abode, on ſuch waggon, " wain, cart, coach, poſt-chaiſe, or other carriage, ſhall " forfeit, for every ſuch offence, a ſum not exceeding five " pounds, nor leſs than twenty ſhillings."

As

As to THE FOURTH POINT, *viz.* Exemptions from tolls.

Waggons, &c. moving on rollers of the breadth of sixteen inches on each side, with flat surfaces, to pass toll-free for one year, and then after paying one half of the toll.

† *Sect.* 45. "It is enacted by 13. Geo. 3. c. 84. s. 26. "and by 14. Geo. 3. c. 82. s. 5. that all carriages moving "upon rollers of the breadth of sixteen inches on each side, "with flat surfaces, shall pass upon any turnpike road, "through any toll-gate or bar, toll-free, upon paying only "so much of the tolls and duties as shall not exceed one "half of the full toll or duty payable by this or any turn-"pike act, for all waggons, wains, or carts, having the fel-"lies of the wheels of the breadth or gauge of six inches "from side to side, or for the horses or beasts of draught "drawing the same, and not rolling a surface of sixteen "inches on each side; and that no more than half toll "shall be paid in respect of waggons having the fellies of "the wheels thereof of the breadth of nine inches, and "rolling a surface of sixteen inches on each side."

Carriages to which the act does not extend.

† *Sect.* 46. But by 13. Geo. 3. c. 84. s. 27. it is provided, "That nothing therein contained shall extend to any chaise-"marine, coach, landau, berlin, chariot, chaise, chair, "calash, or hearse, or to the carriage of such ammunition "or artillery as shall be for his majesty's service, or to any "cart or carriage drawn by one horse, or two oxen, and "no more; or to any carriage having the sole or bottom "of the fellies of the wheels thereof of the breadth of nine "inches, which shall be laden with one block of stone, one "piece of marble, one cable rope, one piece of metal, or "one piece of timber."

Vide 4. Burrow, 2260.

Penalty on persons fraudulently taking the benefit of any exemption is not to exceed five pounds.

† *Sect.* 47. By 13. Geo. 3. c. 84. s. 28. it is also provided, "That if any person shall take the benefit of any exemp-"tions, under any act for the repair of any turnpike road, "in any fraudulent or collusive manner whatsoever, he "shall forfeit not exceeding 5*l.* nor less than 40*s.* for every "such offence."

Baggage waggons exempted.

† *Sect.* 48. And by 18. Geo. 3. c. 63. s. 2. it is enacted, "That no toll shall be taken for any horses belonging to "officers or soldiers upon their march, or upon duty, or "for any horses, cattle, or carriages employed in carrying "their arms or baggage, or any sick, wounded, or disabled "officers or soldiers; and no carriages so employed shall "be weighed, or the owner or driver liable to any "forfeiture for carrying greater weight than allowed by "law."

† *Sect.*

† *Sect.* 49. And by 13. Geo. 3. c. 84. ſ. 24. it is further enacted, "That no perſon ſhall take exemption from toll, "in reſpect of any carriage, or horſe drawing the ſame, "and carrying any particular kind of goods, unleſs ſuch "carriages have the ſole of the bottom of the fellies of the "breadth of ſix inches, or upwards (other than and ex- "cept carts and carriages employed in carrying corn, or "grain in the ſtraw, hay, ſtraw, fodder, dung, lime for "the improvement of land, or other manure, or any im- "plements of huſbandry only); but that the uſual toll, to- "gether with the additional tolls hereby required to be "taken for carriages having the bottom of the fellies of leſs "breadth than ſix inches, as aforeſaid, and for and in reſ- "pect of horſes or beaſts of draught, drawing the ſame "(except as before excepted), ſhall be paid as if no exemp- "tion or leſs toll had been allowed, and as fully as all other "carriages and horſes drawing the ſame."

No exemption from toll by former acts to be claimed by any perſon, unleſs where carriages with ſix inch fellies are uſed.

Carts, &c. employed in huſbandry excepted.

† *Sect.* 50. It has been decided on this clauſe, that a carriage which has paid the toll on paſſing through the turnpike empty for the purpoſe of returning loaded with dung, is entitled to receive back the toll ſo paid on returning loaded with any of the articles of manure mentioned in the act.

Harriſon *v.* James, B. R. Mich. 28. Geo. 3.

† *Sect.* 50*. But by 13. Geo. 3. c. 48. ſ. 25. it is provided, "That no perſon be allowed to take the benefit of any ſuch "exemptions, or to have the privilege herein-before given "of compounding in reſpect of any carriage having the fel- "lies of the wheels thereof of the breadth of ſix inches, or "upwards, unleſs the fellies and the tire of ſuch fellies ſhall "lie flat."

No benefit to be taken of exemptions, unleſs the fellies lie flat.

† *Sect.* 51. And by 16. Geo. 3. c. 39. ſ. 2. "The fellies "or tire whereof ſhall not deviate more than one inch from "a flat ſurface, ſhall be taken to be flat, according to the "intent and meaning of this act."

† *Sect.* 52. By 13. Geo. 3. c. 84. ſ. 60. "No toll ſhall "be collected for carriages ſolely employed in carrying ma- "terials for the repair of any turnpike road or public "highway, or for going to or returning from ſuch em- "ployment."

† *Sect.* 53. By 25. Geo. 3. c. 57. "All carriages of what "deſcription ſoever, or horſes which ſhall be employed in "conveying from one part of this kingdom to another, the "mail or packet which ſhall be made up under the autho- "rity and direction of the poſt maſter-general, or his de- "puties, ſhall be exempted, freed, and diſcharged from the "payment of any tolls whatſoever, that ſhall or may be de-

The mail coaches exempted from toll.

" manded for the paſſage of carriages or horſes through any " turnpike, toll-gate, or bar, at which any toll is collected " by any act or acts of parliament now in force; and all " turnpike-keepers or toll-collectors are hereby directed " and required to permit ſuch carriages and horſes to paſs " through all and every turnpike, toll-gate, or bar, with- " out demanding any toll or duty for ſo doing."

Toll for cattle going to or from water or paſture.

† *Sect.* 54. By 17. Geo. 3. c. 16. " Whereas an exemption from toll by ſeveral particular turnpike acts hath been granted for cattle going to and from water or paſture, and many diſputes have ariſen how far that exemption extended," it is enacted, " That in all caſes where any " exemption from toll for cattle going to and from water " or paſture is or ſhall be given by any turnpike act, ſuch " exemption ſhall only extend to ſuch cattle as ſhall be " driven to and from water or paſture from one pariſh to " the next adjoining pariſh, or to ſuch cattle as ſhall not " paſs upon any ſuch turnpike road more than for the " ſpace of two miles in going to or returning from water " or paſture."

As to THE FIFTH POINT, *viz.* The ſtatute duty.

All ſtatute-duty to be performed in the pariſh, &c. where it ariſes.

† *Sect.* 55. It is enacted by 13. Geo. 3. c. 84. ſ. 32. " That ſurveyors ſhall cauſe the ſtatute-duty required by " the reſpective turnpike acts, and the compoſitions ariſing " from the ſame, to be performed, laid out, and expended " upon the turnpike road lying within the pariſh, townſhip, " or place, from which ſuch duty ſhall be required, and " not elſewhere, and ſhall forfeit forty ſhillings for every " miſapplication thereof; and that where there are two or " more turnpike roads under ſeveral acts of parlia- " ment within the ſame pariſh, townſhip, or place, and the " ſtatute-duty ſhall exceed three days duty in the whole; " two juſtices ſhall, at ſome ſpecial ſeſſions, adjuſt the ſta- " tute-duty betwixt ſuch turnpike roads and the other " highways in ſuch pariſh, townſhip, or place, the ſaid " juſtices previouſly ſummoning the clerks and ſurveyors " of ſuch turnpike roads, and likewiſe the ſurveyors of the " highways, who are hereby reſpectively required to attend " ſuch ſummons."

If more turnpike roads than are in the ſame pariſh, and the ſtatute-duty required to them exceeds three days, the juſtices may adjuſt the proportions.

As to THE SIXTH POINT, *viz.* Materials for repairs.

† *Sect.* 56. It is enacted by 13. Geo. 3. c. 84. ſ. 61. " That no ſurveyor ſhall gather any ſtones for the uſe of " the highways, upon or from the common fields or in- " cloſed lands or grounds of any perſon, without the con- " ſent of the occupiers of ſuch lands or grounds, or a li-

" cence

" cence from a juſtice of the limit where ſuch lands or " grounds lie for that purpoſe, after having ſummoned ſuch " occupier to come before him and heard his reaſons, if he " ſhall appear and give any, for refuſing his conſent."

† *Sect.* 57. But by 13. Geo. 3. c. 84. ſ. 65. " That every " treaſurer and ſurveyor of any turnpike road, who " hath not already given proper ſecurity to the truſtees of " ſuch turnpike road, duly to pay and account for the " money which hath come, or ſhall come to his hands, as " treaſurer or ſurveyor, ſhall, on or before the twenty-fifth " day of *December* next, and every ſucceeding treaſurer and " ſurveyor ſhall, within one month after his appointment, " give a bond to the ſaid truſtees, with a ſufficient ſurety, " in ſuch penalty as the ſaid truſtees, at any public meet- " ing, ſhall direct, conditioned for the duly paying and ac- " counting for all ſuch money which ſhall be then in his " hands, or which he ſhall afterwards receive, as treaſurer " or ſurveyor, according to the directions of the ſaid acts " of parliament reſpecting ſuch turnpike road; which " bond ſhall be wrote upon paper without any ſtamp there- " upon."

Treaſurers and ſurveyors who have not given ſecurity ſhall give bond, &c.

† *Sect.* 58. And by 13. Geo. 3. c. 84. ſ. 36. it is further enacted, " That on every turnpike road where a ſufficient " quantity of ſtone, gravel, chalk, or other materials, can- " not be provided and carried by the labourers and teams " required to perform ſtatute-duty upon the ſame, the ſur- " veyor, with the approbation of the truſtees of ſuch road, " ſhall, and is hereby required to contract for the getting " and carrying thereof, at ſome time and place to be fixed " for that purpoſe, of which ten days notice in writing " ſhall be given, by fixing the ſame on the door of the " church or chapel of ſuch pariſh, townſhip, or place; or " if there be no church or chapel, at the moſt public " place there, which notice ſhall ſpecify the work to be " done, and the time and place for letting thereof: and if " any ſurveyor ſhall have any part, ſhare, or intereſt, di- " rectly or indirectly, in any ſuch contract, or in any other " contract or bargain, for work or materials to be made, " done, or provided, upon, for, or on account of any of " the highways, roads, bridges, or other works under his " care or management; or ſhall, upon his own account, " directly or indirectly let to hire any team, or ſell or diſ- " poſe of any timber, ſtone, or other materials to be uſed " or employed in making or repairing ſuch roads, bridges, " or other works, as aforeſaid, unleſs a licence in writing " for the ſale of any ſuch materials, or for letting to hire " any ſuch team, be firſt obtained from the ſaid truſtees; " he ſhall forfeit, for every ſuch offence, the ſum of ten

Surveyor to get and carry away materials by contract, &c.

Surveyor to have no ſhare in the contract, nor to ſell materials, or hire out any team.

" pounds, and be for ever after incapable of being employ-
" ed as a ſurveyor, under the authority of this or any other
" act of parliament."

As to THE SEVENTH POINT, *viz.* As to nuſances.

Truſtees may direct proſecution for nuſances.

† *Sect.* 59. It is enacted by 13. Geo. 3. c. 84. ſ. 37. " That if the ſurveyor or other perſon having the care of
" any turnpike road, ſhall knowingly ſuffer to be or re-
" main, for four days in any part thereof, within ten feet
" on either ſide of the middle of ſuch road, any poſt, heaps
" of ſtones, rubbiſh or earth, ſet up or raiſed on or above
" the ſurface of the ſaid road, by which the paſſage thereof
" ſhall or may be obſtructed, impeded, confined, or ſtrait-
" ened (other than and except poſts, blocks, ſtones, or
" banks of earth fixed in the ground, or raiſed for ſecuring
" horſe or foot roads or paſſages for water, and all direc-
" tion-poſts and ſtones), ſuch ſurveyor or other perſon
" ſhall forfeit forty ſhillings."

Perſons making incroachments forfeit 40s.

† *Sect.* 60. By the 13. Geo. 3. c. 84. ſ. 38. it is further enacted, " That if any perſon ſhall incroach, by making or
" cauſing to be made, any hedge, ditch, or other fence on
" any turnpike road, within the diſtance of thirty feet from
" the middle or centre thereof; or ſhall plough, harrow, or
" break up the ſoil of any land or ground; or in ploughing
" or harrowing the adjacent lands, ſhall turn his or their
" plough or harrow in or upon any land or ground within
" the diſtance of fifteen feet from the middle or centre of
" any turnpike road made or to be made; every perſon
" ſo offending ſhall forfeit, for every ſuch offence, forty
" ſhillings to ſuch perſon as ſhall make information of the
" ſame: and it ſhall be lawful for the truſtees who have the
" care of any ſuch road, or any five or more of them, to
" cauſe ſuch hedge, ditch, or fence, to be taken down or
" filled up, at the expence of the perſon or perſons to whom
" the ſame ſhall belong; and it ſhall and may be lawful for
" any one or more juſtice or juſtices of the peace of the
" limit where ſuch offence ſhall be committed, upon proof
" thereof to him or them made upon oath, to levy as well
" the expences of taking down ſuch hedges as aforeſaid, as
" the ſeveral and reſpective penalties hereby impoſed, by
" diſtreſs and ſale of the offender's goods and chattels, ren-
" dering the overplus to the owner on demand."

Perſons damaging mileſtones, &c.

† *Sect.* 61. By 13. Geo. 3. c. 84. ſ. 39. " And whereas in ſome places it hath been and may be found neceſſary, and the truſtees of all turnpike roads are hereby authoriſed and required to ſecure, or cauſe to be ſecured, horſe cauſeways, and foot cauſeways to travel upon, in public

public highways, by poſts, blocks, or great ſtones fixed in the ground, or by banks of earth caſt up, or otherwiſe, from being broken up and ſpoiled with waggons, wains, carts, or carriages; and foraſmuch as ſeveral evil-diſpoſed perſons do or may wilfully or wantonly pull up, cut down, and remove or damage the ſaid poſts, blocks, and great ſtones, ſo fixed, or to be fixed, as aforeſaid, and drive carriages upon ſuch banks and cauſeways, or againſt the ſides thereof, and alſo dig or cut down the ſaid banks, which are the ſecurities and defence of the ſaid cauſeways, whereby the cauſeways or banks are often ruined and deſtroyed; and ſuch evil diſpoſed perſons do or may break, damage, or throw down the ſtones, bricks, or wood fixed upon the parapets or battlements of bridges, and do or may pull down, deſtroy, obliterate, or deface any mile-ſtone, or poſt, graduated or direction-poſt or ſtone, erected or to be erected, upon any turnpike road:" for prevention thereof, be it enacted, "That every perſon who ſhall be guilty of any "ſuch offence, ſhall, upon complaint thereof made to any "juſtice of the peace of the limit where the ſame ſhall be "proved to be done, by the oath of any credible witneſs, "or upon view of the juſtice himſelf, forfeit, for every of "the ſaid offences, any ſum not exceeding five pounds, nor "leſs than ten ſhillings; and in default of payment thereof, "ſhall be committed to the houſe of correction of ſuch li-"mit, there to be whipped and kept to hard labour, for "any time not exceeding one calendar month, nor leſs "than ſeven days, at the diſcretion of ſuch juſtice, unleſs "the ſame be ſooner paid." forfeit not exceeding 5l. nor leſs than 10s.

† *Sect.* 62. By 13. Geo. 3. c. 84. ſ. 40. "And whereas many bad accidents happen, and great miſchiefs are frequently done upon the ſtreets and highways, being turnpike roads, by the negligence or wilful miſbehaviour of perſons driving carriages thereon;" it is therefore enacted, "That if the driver of any cart, car, dray, or waggon, "ſhall ride upon any ſuch carriage, in any ſtreet or high-"way, not having ſome other perſon on foot or on horſe-"back, to guide the ſame (ſuch carriages as are conducted "by ſome perſon holding the reins of the horſe or horſes "drawing the ſame excepted); or if the driver of any car-"riage whatſoever, on any part of any ſtreet or highway, "ſhall, by negligence or wilful miſbehaviour, cauſe any "hurt or damage to any perſon or carriage paſſing or being "upon ſuch ſtreet or highway; or ſhall quit the highway, "and go on the other ſide the hedge or fence incloſing the "ſame; or wilfully be at ſuch diſtance from ſuch carriage, "or in ſuch a ſituation, whilſt it ſhall be paſſing upon "ſuch highway, that he cannot have the direction and go-"vernment of the horſes or cattle drawing the ſame; or Driver not attending his carriage, or wilfully miſbehaving.

" ſhall, by negligence or wilful miſbehaviour, prevent,
" hinder, or interrupt the free paſſage of any other carriage,
" or of his majeſty's ſubjects, on the ſaid highways; or if
" the driver of any empty or unloaded waggon, cart, or
" other carriage, ſhall refuſe or neglect to turn aſide and
" make way for any coach, chariot, chaiſe, loaded waggon,
" cart, or other loaded carriage; or if any perſon ſhall
" drive, or act as the driver of, any ſuch coach, poſt-chaiſe,
" or other carriage let for hire, or waggon, wain, or cart
" not having the owner's name, as hereby required, painted
" thereon; or ſhall refuſe to diſcover the true Chriſtian
" and ſurname of the owner of ſuch reſpective carriage;
forfeits, if not the owner of the carriage, not exceeding 10s. " every ſuch driver ſo offending in any of the caſes afore-
" ſaid, and being convicted of any ſuch offence, either
" by his own confeſſion, the view of a juſtice of peace, or
" by the oath of one or more credible witneſs or witneſſes,
" before any juſtice of the peace of the limit where ſuch of-
" fence ſhall be committed, ſhall, for every ſuch offence,
" forfeit any ſum not exceeding ten ſhillings, in caſe ſuch
" driver ſhall not be the owner of ſuch carriage; and in
and if the owner, not exceeding 20s. " caſe the offender be the owner of ſuch carriage, then any
" ſum not exceeding twenty ſhillings; and in either of the
" ſaid caſes ſhall, in default of payment, be committed to
" the houſe of correction for any time not exceeding one
" month, unleſs ſuch forfeiture ſhall be ſooner paid; and
" every ſuch driver, offending in either of the ſaid caſes,
" ſhall and may, by authority of this act, with or without
May be apprehended without warrant. " any warrant, be apprehended by any perſon or perſons who
" ſhall ſee ſuch offence committed, and ſhall be immediately
" conveyed or delivered to a conſtable, or other peace officer,
" in order to be conveyed before ſome juſtice of the peace, to
" be dealt with according to law; and if any ſuch driver, in
" any of the caſes aforeſaid, ſhall refuſe to diſcover his name,
" it ſhall and may be lawful for the juſtice of the peace be-
" fore whom he ſhall be taken, or to whom any ſuch com-
" plaint ſhall be made, to commit him to the houſe of cor-
" rection for any time not exceeding three months, or to
" proceed againſt him for the penalty aforeſaid, by a deſcrip-
" tion of his perſon and the offence, and expreſſing in his
" proceeding, that he refuſed to diſcover his name."

As to THE EIGHTH POINT, *viz.* Subſcribers and mortgagees.

Subſcribers and mortgagees. † *Sect.* 63. And by the 13. Geo. 3. c. 84. ſ. 35. it is enacted, " That if any perſon ſhall agree to advance any
" ſum of money, to be employed in the making or repair-
" ing any turnpike road or highway intended to be made
" turnpike, and ſhall ſubſcribe his, her, or their name or
" names

" names to any writing for that purpoſe; every ſuch perſon " ſhall be liable to pay every ſum or ſums of money ſo ſub- " ſcribed, according to the purport of ſuch writing; and in " default of payment thereof within twenty-one days after " the ſame ſhall become pavab'e, according to the purport " of ſuch writing, and ſhall be demanded by the perſon " to whom the ſame is made payable by ſuch writing, or " if no perſon be named therein for that purpoſe by the " treaſurer, every ſuch treaſurer or other perſon may ſue " for and recover the ſame in any of his majeſty's courts of " record by action of debt, &c."

† *Sect.* 64. By 13. Geo. 3. c. 84. ſ. 52. it is further enacted, " That every mortgagee that hath taken or been " in poſſeſſion of any toll, gate, or bar ſet up or erected on " any turnpike road, or of any lands or tenements, the " rents and profits whereof are appropriated to the repair " of any part of any turnpike road, ſhall within fourteen days " after he, ſhe, or they ſhall have received notice in writ- " ing from the truſtees of ſuch turnpike road, or any five " of them, render upon oath, to be adminiſtered and taken " by and before one juſtice or any one truſtee, an exact ac- " count in writing, to ſuch truſtees, or to any perſon ap- " pointed by them, or any five of them, to be named in " ſuch notice, of all monies received by ſuch mortgagee, " or by any other perſon for their uſe and benefit, or by " their authority, at ſuch toll, gate, or bar, or otherwiſe, " and of what they have expended in keeping or repairing " the ſame; and in caſe they ſhall neglect to render ſuch " account when required, in the manner herein directed, " they ſhall ſeverally forfeit and pay to the ſaid truſtees ten " pounds, to be recovered by the ſaid truſtees, or any five " or more of them, or by the treaſurer or clerk to the ſaid " truſtees, in a ſummary manner before one juſtice, to be " applied to the uſe of the reſpective road whereupon ſuch " toll, gate, or bar ſhall be placed"

Mortgagees ſhall account for the monies they receive for tolls. See 2. Term Rep. 169.

† *Sect.* 65. And by 13. Geo. 3. c. 84. ſ. 53. " If any " ſuch mortgagee ſhall keep poſſeſſion of any toll, gate, or " bar, or receive the tolls and duty thereof, or of any ſuch " rents or profits as aforeſaid after ſuch mortgagee ſhall have " received the full ſum of money due on his mortgage, and " the intereſt thereof with coſts, ſuch mortgagee ſhall for- " feit to the truſtees double the ſum of money he ſhall have " received over and above the ſum due as aforeſaid, with " treble coſts of ſuit; to be recovered by the ſaid truſtees, " or by the treaſurer or clerk to ſuch truſtees, by action of " debt, &c. in any of his majeſty's courts of record; and " applied as abovementioned."

Penalties for holding over.

As to THE NINTH POINT, *viz.* As to officers in general.

If the gate-keeper, who is discharged, refuses to deliver up poſſeſſion of the houſe, &c. the juſtices may, by warrant, order him to be removed, with his goods.

† *Sect.* 66. By 13. Geo. 3. c. 84. ſ. 54. it is enacted, "That if any toll-gatherer or gate-keeper, who ſhall be diſcharged by the truſtees, ſhall refuſe to deliver up the poſſeſſion of the houſe, &c. within two days after notice of his diſcharge; or if the wife or family of any ſuch, who ſhall die, ſhall refuſe within four days after ſuch new appointment ſhall be made as aforeſaid; any juſtice by warrant ſhall order the conſtable, or other peace officer, to remove the perſons, together with their goods, out of ſuch houſe, and to put the new-appointed officer into the poſſeſſion thereof."

Gate-keepers and ſurveyors to account upon oath, when required by the truſtees, or forfeit 5l.

† *Sect.* 67. And by 13. Geo. 3. c. 84. ſ. 55. it is further enacted, "That the gate-keeper or toll-gatherer, and every ſurveyor ſhall, when required, by notice in writing from any five of the truſtees, render upon oath, before one juſtice or truſtee, a true account in writing of all monies received on account of ſuch turnpike road, not before accounted for, under the penalty of five pounds, to be recovered in a ſummary manner before any one juſtice, and applied to the uſe of the reſpective road on which ſuch toll-gate ſhall be placed."

No gate-keeper to be removed as a pauper, unleſs actually chargeable, &c. nor ſhall gain a ſettlement, nor be aſſeſſed, &c.

† *Sect.* 68. And by 13 Geo. 3. c. 84. ſ. 56. it is further enacted, "That no gate-keeper or other perſon renting the tolls, and reſiding in any toll-houſe, ſhall be removable by any juſtices, in purſuance of any laws for the regulation of the poor, unleſs he become chargeable to the pariſh; and that no ſuch gate-keeper, or perſon as aforeſaid, ſhall thereby gain a ſettlement; and that no tolls nor any toll-houſe, nor any perſon in reſpect of ſuch tolls or toll-houſe, ſhall be aſſeſſed to the poor's-rate, or any other public or parochial levy whatſoever."

Gate-keepers permitting horſes, or carriages, otherwiſe than allowed by the act, or without proper inſcriptions, &c. forfeit 40s.

† *Sect.* 69. And by 13. Geo. 3. c. 84. ſ. 57. it is further enacted, "That if any toll-gatherer or gate-keeper ſhall ſuffer any carriage to paſs through any toll-gate or bar with any greater number of horſes, or beaſts of draught, or with any carriage conſtructed or drawn in any other manner than is before directed, or without ſuch names and deſcriptions painted thereon as are hereby directed, and ſhall not within one week proceed for the recovery of the forfeiture or penalty in the manner directed by this act, he ſhall forfeit forty ſhillings."

Clerks, treaſurers, &c. to deliver up their accounts.

† *Sect.* 70. And by 13. Geo. 3. c. 84. ſ. 45. it is further enacted, "That all officers appointed by any act for

"the

" the repair of turnpike roads, their executors or adminiſ-
" ſtrators, ſhall, within ten days after notice in writing by
" the truſtees, or any five or more of them, deliver up all
" books, accounts, papers, or writings whatſoever, relative
" to the execution of ſuch reſpective offices, on pain of
" forfeiting twenty pounds."

† *Sect.* 71. And by 13. Geo. 3. c. 84. ſ. 65. it is fur- Treaſurers and ſurveyors ſhall give bond with ſurety to the truſtees, for the money in their hands.
ther enacted, " That every treaſurer and ſurveyor ſhall,
" within one month after his appointment, give a bond to
" the truſtees, with ſurety, in ſuch penalty as the ſaid truſ-
" tees ſhall direct, for the paying and accounting for all
" money in his hands, or which he ſhall afterwards receive,
" as treaſurer or ſurveyor, according to the directions of
" the ſeveral acts of parliament reſpecting ſuch turnpike
" road, which bond ſhall be wrote upon paper without any
" ſtamp thereupon."—But by 23. Geo. 3. c. 18. ſ. 15. this
exemption from ſtamps is repealed.

† *Sect.* 72. By 13. Geo. 3. c. 84. ſ. 73. it is alſo enacted, Vide ſect. 72.
" That every conſtable, headborough, or tythingman, re- N. B. Upon what evidence convictions are to be made, and who are good witneſſes. Vide a ſimilar clauſe, 13. Geo. 3. ſ. 77. & 78. ante, p. 212. ſ. 190.
" fuſing or neglecting to put this act into execution, or to
" account for and deliver any forfeiture or penalty, accord-
" ing to the directions of this act, and every ſurveyor, toll-
" gatherer, and all other perſons employed for the repairing
" roads, as ſhall receive ſalaries or rewards, who ſhall wil-
" fully neglect for one week after the offence committed to
" lay ſuch information upon oath before a juſtice for the
" limit wherein ſuch offence was committed, ſhall, upon
" due information upon oath before one juſtice, forfeit
" ten pounds."

† *Sect.* 73. And by 13. Geo. 3. c. 84. ſ. 74. it is further provided, " That any juſtice may act in the execution of
" this act, notwithſtanding he may be a creditor or a truſtee
" for repairing or amending the roads on which any offence
" contrary to this act was committed."

† *Sect.* 74. And by 13. Geo. 3. c. 84. ſ. 75. it is further enacted, " That whoever ſhall reſiſt or make forcible oppo-
" ſition to any perſon employed in the due execution of
" this act, or any particular act made for amending any
" particular highway, or ſhall aſſault any collector in the
" execution of his office, or ſhall paſs through any turn-
" pike gate, rail, or chain, or other fence, ſet up by au-
" thority of parliament, without paying the toll appointed
" to be paid at ſuch gate or other fence, or make reſcue of
" cattle, or any other goods diſtrained by virtue of this
" act, or if any conſtable, headborough, or tythingman, ſhall

" refuſe

" refuſe or neglect to execute any warrant granted by " any juſtice, purſuant to the directions of this act, he ſhall, " on conviction as above, forfeit not exceeding ten pounds, " nor leſs than forty ſhillings, in the manner directed by " 13. Geo. 3. c. 78. ſ. 72."

As to THE TENTH POINT, *viz.* The repair of altered turnpike roads.

Perſons liable to repair old highways turned or ſtopped up, ſhall be liable to repair a part of the new highway equal to the burthen of the old one.

† *Sect.* 75. By the 13. Geo. 3. c. 84. ſ. 63. it is recited, " That parts of highways or turnpike roads have been, or may be, diverted and turned by legal authority, to make the ſame nearer or more commodious to the publick; and that doubts had ariſen, whether the inhabitants, or any particular perſon, liable to repair the old highway or road, ſo deviated from by ſtatute duty, tenure, or otherwiſe, ought to repair, or contribute to the repair of the whole, or ſome, and what part or proportion of ſuch new highway or road;" for obviating which doubts, and preventing diſputes about the ſame, IT IS ENACTED, " That the in- " habitants of every pariſh, townſhip, or place, and per- " ſons liable as aforeſaid, to the repair of any ſuch old high- " way or road, ſhall reſpectively be and continue in the " ſame manner liable to the repair of ſuch new highway " or road, or ſo much thereof as ſhall be equal to the bur- " den and expence which he ſhall be exonerated, by turn- " ing the ſame, as aforeſaid; and that if the parties cannot

And if the parties cannot agree, it ſhall be viewed and ſettled by two juſtices of the peace.

" agree, the ſame ſhall be viewed by two juſtices, and ſettled, " adjuſted, and determined by them; and from and after " ſuch determination of the juſtices, the inhabitants, or " the perſon liable to repair, ſhall bear all charges and ex- " pences of indictments and proſecutions for not repairing " the ſame: and if it ſhall be found more convenient to fix

A groſs or annual ſum may be paid, if the parties agree thereto.

" a groſs ſum, or an annual ſum, to be paid by any ſuch " inhabitants or perſon, inſtead of fixing the part or pro- " portion of ſuch new highway or road to be repaired by " him, the ſaid juſtices may, with the conſent of ſuch per- " ſon, and of the inhabitants intereſted therein, obtained " at a veſtry or public meeting held for that purpoſe, and " alſo of the truſtees at a public meeting, if it be turnpike " road, order and direct the ſame accordingly; which " order ſhall be, and for ever after continue, binding to all " perſons whomſoever."

Rex v. Llandillo, 2. Term Rep. 232.

It hath been determined, that if the truſtees turn a road through an incloſure, and make the fences at their own expence, and repair them for ſeveral years, they cannot be compelled to continue ſuch repairs, unleſs there is a ſpecial proviſion in the act to that effect.

† *Sect.*

† *Sect.* 76. And by 13. Geo. 3. c. 84. ſ. 33. it is further enacted, "That when the inhabitants ſhall be indicted or "preſented for not repairing any highway, being turnpike "road, and the court ſhall impoſe a fine, the ſame ſhall be "proportioned, with the coſts and charges, between the in- "habitants of the pariſh, townſhip, or place, and the truſ- "tees of ſuch turnpike road; and the court ſhall order the "treaſurer to pay the ſum ſo proportioned, if it ſhall ap- "pear that the ſame may be paid without endangering the "ſecurity of the creditors who have advanced their money "upon the tolls to be raiſed thereupon."

Where turnpike roads are indicted, the court may proportion the fine and coſts between the inhabitants and the truſtees; without endangering the ſecurity of the creditors.

As to THE ELEVENTH POINT, *viz.* How far the powers of the highway act may be adopted.

† *Sect.* 77. It is recited by the ſaid ſtatute, ſ. 70. "That whereas the powers given by ſeveral turnpike acts are ineffectual for the purpoſes of digging, providing, and carrying materials, for the uſe of the turnpike roads therein deſcribed, and alſo for the purpoſes of enlarging, diverting, and turning ſuch turnpike roads, and ſtopping up, ſelling, and diſpoſing of the old roads ſo to be diverted and turned; and alſo for the making, opening, and cleanſing of ditches and drains, and the cutting and pruning of hedges and trees; and alſo for the calling forth and compelling the performance of the ſtatute duty which ſhall belong to ſuch turnpike roads: and whereas more ample powers have been given in the acts for highways in general (which highways comprehend and include turnpike roads);" be it therefore enacted, "That "the ſurveyors ſhall, with the approbation of the truſtees of "every turnpike road, apply any part of the tolls and ſtatute- "duty in the execution of all act or acts of parliament for "the amendment and preſervation of the highways, and "ſhall execute the ſame upon ſuch turnpike roads reſpec- "tively, for the ſeveral purpoſes aforeſaid."

When the powers for providing materials, enlarging and turning turnpike roads, making drains, pruning hedges and trees, and calling forth the ſtatute-duty, are ineffectual, and more ample powers for theſe purpoſes are given by the highway act, the ſurveyors of turnpike roads, with the approbation of the truſtees, may execute and enforce theſe powers upon and for the benefit of the turnpike roads, upon the terms and under the reſtrictions in the highway act.

As to THE TWELFTH POINT, *viz.* The modes of proceeding.

† *Sect.* 78. By 13. Geo. 3. c. 84. ſ. 72. it is enacted, "That the forms of proceedings relative to the ſeveral mat- "ters contained in this act, which are ſet forth and expreſ- "ſed in the ſchedule hereunto annexed, ſhall be uſed upon "all occaſions, with ſuch additions or variations only, as "may be neceſſary to adapt them to the particular exigen- "cies of the caſe; and that no objection ſhall be made, or "advantage taken, for want of form in any ſuch proceed- "ings, by any perſon or perſons whomſoever."

Forms contained in the ſchedule to be uſed.

† *Sect.*

Inhabitants good witneſſes.

† *Sect.* 79. But by 13. Geo. 3. c. 84. ſ. 74. provided always, and be it further enacted, "That no conviction ſhall "be had or made by virtue of this act, unleſs upon confeſſion "of the party accuſed, or upon the oath of one or more cre- "dible witneſs or witneſſes; and that any inhabitant of any "pariſh, townſhip, or place, in which any offence ſhall be "committed contrary to this act, ſhall be deemed a compe- "tent witneſs, notwithſtanding his or her being an inhabi- "tant of ſuch pariſh, townſhip, or place; and that any juſ- "tice of the peace may act in the execution of this act, not- "withſtanding he may be a creditor, or a truſtee for re- "pairing and amending the roads, on which any offence "contrary to this act ſhall be committed."

Penalties and forfeitures.

† *Sect.* 80. And by 13. Geo. 3. c. 84. ſ. 76. it is further enacted, "That all penalties and forfeitures by this act im- "poſed, for any offence againſt the ſame, and all coſts and "charges to be allowed and ordered by the authority of this "act (the manner of levying and recovering of which is not "hereby otherwiſe particularly directed), ſhall be levied by "diſtreſs and ſale of the goods and chattels of the offender, "or perſon liable or ordered to pay the ſame reſpectively, by "warrant under the hand and ſeal of ſome juſtice of the "peace, for the limit where ſuch offence, neglect, or default "ſhall happen, and ſuch order for payment of ſuch coſts or "charges ſhall be made, rendering the overplus of ſuch diſ- "treſs and ſale, if any, to the party or parties, after deduct- "ing the charges of making the ſame; which warrants ſuch "juſtice is hereby impowered and required to grant, upon "conviction of the offender, by confeſſion, or upon the "oath of one or more credible witneſs or witneſſes, or upon "order made, as aforeſaid; and the penalties and forfeitures, "coſts and charges, when ſo levied, ſhall be paid, the one half "to the informer, and the other half to the ſurveyor of the "turnpike road where ſuch offence, neglect, or default ſhall "happen, to be employed towards the repair thereof, unleſs "otherwiſe directed by this act: And in caſe ſuch diſtreſs "cannot be found, and ſuch penalties and forfeitures, or "the ſaid coſts and charges, ſhall not be forthwith paid, it "ſhall and may be lawful for ſuch juſtice, and he is hereby "authoriſed and required, by warrant under his hand and "ſeal, to commit ſuch offender or offenders, or perſon or "perſons, liable to pay the ſame reſpectively, to the com- "mon gaol, or houſe of correction, of the limit where the "offence ſhall be committed, or ſuch order, as aforeſaid, "ſhall be made, for any time not exceeding three months, "unleſs the ſaid penalty, forfeiture, coſts, or charges, ſhall "reſpectively be ſooner paid. And if ſuch offender or of- "fenders, or perſon or perſons, liable or ordered to pay the

"ſame

" ſame reſpectively, ſhall live out of the juriſdiction of the " juſtice or juſtices hereby authoriſed to grant ſuch war- " rant, it ſhall and may be lawful for any juſtice of the peace " of the limit wherein ſuch perſon ſhall inhabit, and every " ſuch juſtice is hereby required, upon requeſt to him for " that purpoſe made, and upon a true copy of the convic- " tion whereby ſuch forfeiture or penalty was incurred, or " of the order for the payment of ſuch coſts or charges, pro- " duced and proved by a credible witneſs upon oath, by " warrant, under his hand and ſeal, to cauſe the penalty or " forfeiture mentioned in ſuch conviction, or the coſts or " charges mentioned in ſuch order, to be levied by diſtreſs " and ſale of the goods and chattels of ſuch offender or of- " fenders, or perſon or perſons, liable or ordered to pay the " ſame reſpectively as aforeſaid; and if no ſufficient diſtreſs " can be had, to commit ſuch offender or offenders, or per- " ſon or perſons, liable as aforeſaid, to the common gaol, or " houſe of correction, of ſuch limit, for the time and in " manner aforeſaid."

† *Sect.* 81. By 13. Geo. 3. c. 84. ſ. 77. Provided nevertheleſs, " That no warrant of diſtreſs, unleſs otherwiſe di- " rected by this act, ſhall be iſſued for levying any penalty or " forfeiture, coſts or charges, until ſix days after the offender " ſhall have been convicted, and an order made and ſerved " upon him or her for payment thereof."

† *Sect.* 82. And by 13. Geo. 3. c. 84. ſ. 78. provided alſo, and be it enacted, " That whatever penalty or forfeiture ſhall " be levied or recovered on the information of the ſurveyor " of any turnpike road, or of any toll-gatherer, or other " perſon employed by the truſtees appointed for repairing " the roads, and receiving ſalaries or rewards for their ſer- " vices, and not otherwiſe directed by this act, ſhall go and " be applied to the amending of the ſaid turnpike roads re- " ſpectively, and to no other uſe or purpoſe whatſoever; any " thing in this or any other act to the contrary notwith- " ſtanding."

† *Sect.* 83. And by 13. Geo. 3. c. 84. ſ. 79. it is enacted, " That every proſecutor or informer may, at his election, " ſue for, and recover any forfeiture or penalty impoſed by " this, or any other act or acts of parliament made for erect- " ing turnpikes, or for repairing and amending turnpike " roads, in the manner hereafter mentioned; that is to ſay, " if the ſame ſhall not amount to the ſum of forty ſhillings, " it ſhall be recoverable only by information before a juſtice " of the peace; and if the ſame ſhall amount to forty ſhil- " lings, or upwards, it ſhall and may be recovered either by " information,

Proſecutors may recover by information, or by action, &c.

" information, as aforeſaid, or by action of debt, in any of " his majeſty's courts of record, in which it ſhall be ſuffi- " cient to declare that the defendant is indebted to the plain- " tiff in the ſum of being " forfeited by an act, paſſed in the thirteenth year of the " reign of his preſent majeſty, intituled, *An act to explain, " amend, and reduce into one act of parliament, the general laws " now in being, for regulating the turnpike roads in that part of* " Great Britain *called* England, *and for other purpoſes*; and " the plaintiff, if he recover in any ſuch action, ſhall have " full coſts: Provided, that there ſhall not be more than one " recovery for the ſame offence; and that ten days notice " in writing be given to the party offending previous to the " commencement of ſuch action; and that the ſame be " brought and commenced within one calendar month after " the offence for which ſuch action is brought ſhall have " been committed."

Party aggrieved may recover ſatisfaction for ſpecial damages.

† *Sect.* 84. And by 13. Geo. 3. c. 84. ſ. 80. it is further enacted, " That where any diſtreſs ſhall be made for any ſum " or ſums of money to be levied by virtue of this act, the diſ- " treſs itſelf ſhall not be deemed unlawful, nor the party or " parties making the ſame be deemed a treſpaſſer or treſpaſſers, " on account of any default or want of form in any pro- " ceedings relating thereto; nor ſhall the party or parties " diſtraining be deemed a treſpaſſer or treſpaſſers *ab initio*, on " account of any irregularity which ſhall be afterwards done " by the party or parties diſtraining; but the perſon or per- " ſons aggrieved by ſuch irregularity may recover full ſatiſ- " faction for the ſpecial damage in an action on the caſe."

Tender of amends.

† *Sect.* 85. But by 13. Geo. 3. c. 84. ſ. 81. " it is provided alſo, " That no plaintiff or plaintiffs ſhall recover in any " action for any ſuch irregularity, treſpaſs, or wrongful pro- " ceedings, if tender of ſufficient amends ſhall be made by or " on the behalf of the party or parties who ſhall have com- " mitted, or cauſed to be committed, any ſuch irregularity, " or wrongful proceedings, before ſuch action brought; and " in caſe no ſuch tender ſhall have been made, it ſhall and " may be lawful for the defendant in any ſuch action, by " leave of the Court where ſuch action ſhall depend, at any

Money into court.

" time before iſſue joined, to pay into court ſuch ſum of " money as he or they ſhall ſee fit; whereupon ſuch pro- " ceedings or orders, and judgments ſhall be had, made, and " given, in and by ſuch Court, as in other actions where the " defendant is allowed to pay money into court."

Appeal.

† *Sect.* 86. But by 13. Geo. 3. c. 84. ſ. 82. it is provided alſo, " That if any perſon ſhall think himſelf or herſelf ag- " grieved

" grieved by any thing done by any juſtice or juſtices of the " peace in purſuance of this act, except under the particular " circumſtances hereafter mentioned, and for which no par- " ticular method of relief hath been already appointed, ſuch " perſon may appeal to the juſtices of the peace, at any ge- " neral quarter-ſeſſions of the peace, to be held for the limit " wherein the cauſe of ſuch complaint ſhall ariſe; ſuch ap- " pellant firſt giving, or cauſing to be given, to ſuch juſ- " tice, by whoſe act or acts ſuch perſon ſhall think himſelf " or herſelf aggrieved, notice in writing of his or her in- " tention to bring ſuch appeal, and of the matter thereof, " within ſix days after the cauſe of ſuch complaint aroſe, " and within four days after ſuch notice, entering into re- " cognizance before ſome juſtice of the peace, with one ſuf- " ficient ſurety, conditioned to try ſuch appeal at, and abide " the order of, and pay ſuch coſts, as ſhall be awarded by " the juſtices at ſuch quarter-ſeſſions; and each and every " juſtice of the peace, having received notice of ſuch appeal, " as aforeſaid, ſhall return all proceedings whatever had be- " fore them reſpectively, touching the matter of ſuch ap- " peal, to the ſaid juſtices at their general quarter-ſeſſions " aforeſaid, on pain of forfeiting five pounds for every ſuch " neglect; and the ſaid juſtices, at ſuch ſeſſion, upon due " proof of ſuch notice being given as aforeſaid, and of the " entering into ſuch recognizance, ſhall hear, and finally " determine the cauſes and matters of ſuch appeal in a ſum- " mary way, and award ſuch coſts to the parties appealing, " or appealed againſt, as they the ſaid juſtices ſhall think " proper, to be levied and recovered as herein-before di- " rected; and the determination of ſuch quarter-ſeſſions ſhall " be final and concluſive to all intents and purpoſes; and no " proceeding to be had or taken in purſuance of this act ſhall " be quaſhed or vacated for want of form, or removed by " *certiorari*, or any other writ or proceſs whatſoever, into " any of his majeſty's courts of record at *Weſtminſter*; any " law or ſtatute to the contrary notwithſtanding."

No certiorari.

† *Sect.* 87. And by 13. Geo. 3 c. 84. ſ. 83. it is provided, " That no ſuch appeal ſhall be made againſt any conviction " for any penalty or forfeiture incurred by virtue of this act, " unleſs the perſon convicted ſhall, at the time of ſuch con- " viction, if he ſhall be then preſent, if not, within ſix days " after, give, or cauſe to be given, notice of his or her in- " tention to appeal, and at the ſame time enter into recog- " nizance, or give ſecurity, with ſufficient ſureties, to pay " ſuch penalty or forfeiture, in caſe ſuch conviction ſhall be " affirmed upon ſuch appeal; and upon his or her giving " ſuch ſecurity, the further proceedings for ſuch penalty or " forfeiture ſhall be ſuſpended until ſuch appeal ſhall be heard " and determined."

No appeal, unleſs the party give notice thereof, &c.

† *Sect.*

Power to administer oaths.

† *Sect.* 88. And by 13 Geo. 3. c. 84. f. 84. it is enacted, "That where any oath is hereby required and directed to be "made or taken, the justices of the peace of any limit, or "the trustees of any turnpike road (as the case may be), and "according to the several jurisdictions herein given to them "respectively, as aforesaid, shall, and they are hereby re-"spectively impowered to administer the same."

Action to be brought within three months, &c.

† *Sect.* 89. And by 13. Geo. 3. c. 84. f. 85. it is further enacted, "That if any action or suit shall be commenced "against any person or persons, for any thing done or acted "in pursuance of this act; then, and in every such case, "such action or suit shall be commenced or prosecuted "within three calendar months after the fact committed, "and not afterwards; and the same and every such action "or suit, shall be brought in the county where the person, "against whom such action or suit shall be commenced, "doth ordinarily inhabit or reside, or where the fact was "committed, and not elsewhere; and the defendant or de-"fendants in every such action or suit, shall and may plead
General issue. "the general issue, and give this act, and the special matter, "in evidence at any trial to be had thereupon, and that the "same was done in pursuance and by the authority of this "act: and if the same shall appear to have been so done, or "if any such action or suit shall be brought after the time "limited for bringing the same, or be brought and laid in "any other county than as aforesaid, then the jury shall "find for the defendant or defendants; or if the plaintiff or "plaintiffs shall become nonsuit, or discontinue his, her, "or their action, after the defendant or defendants shall "have appeared; or if upon demurrer judgment shall be "given against the plaintiff or plaintiffs, the defendant or "defendants shall and may recover treble costs, and have the "like remedy for recovery thereof, as any defendant or de-"fendants hath or have in any cases by law."

Informations for penalties, in order to favour the offender, are deemed fraudulent and void.

Sect. 90. And it is further enacted by the said statute 13. Geo. 3. c. 84. f. 48. That whereas fraudulent contrivances may be practised by offenders, their friends, and others, to evade the just recovery of forfeitures and penalties, by setting up colourable prosecutions, be it enacted, "That justices, "where any information or conviction shall be set up by "way of defence, or to defeat any information or proceed-"ing on any forfeiture or penalty inflicted as aforesaid, do "examine into the real merits; and if it shall appear that "the same was done to favour the offender, such informa-"tion or conviction shall be deemed to be fraudulent, and "null and void; and every such justice or justices shall de-"termine and convict, as if no information or conviction "had been made, prosecuted, or obtained."

CHAPTER

CHAPTER THE SEVENTY-SEVENTH.

OF NUSANCES RELATING TO PUBLIC BRIDGES.

AND now I am in the ſecond place to conſider nuſances relating to bridges in particular; for the better underſtanding whereof I ſhall examine,

By the great charter 9. H. 3. c. 15. no town nor freeman ſhall be diſtrained to make bridges nor banks, but ſuch as of old time and of right have been accuſtomed. See alſo 2. Inſt. 701. 1. Burr. 267.

1. How public bridges are to be repaired by the common law.

2. How by the ſtatute.

As to THE FIRST POINT, I ſhall conſider,

1. In what manner, and by whom, ſuch bridges are to be repaired by common law.

2. In what manner perſons bound to ſuch repairs are to be proceeded againſt.

As to the firſt of theſe particulars, *viz.* In what manner, and by whom, public bridges are to be repaired by the common law.

Sect. 1. It ſeemeth to be clear, that thoſe who are bound to repair ſuch bridges, muſt make them of ſuch height and ſtrength, as ſhall be anſwerable to the courſe of the water, whether it continue in the old channel, or make a new one; and that they are not puniſhable as treſpaſſers for entering on any adjoining land for ſuch purpoſe, or for laying thereon the materials requiſite for ſuch repairs.

43. Aſſize p. 43. Dalton c. 14.

Alſo it ſeemeth to be clearly (*a*) ſettled, that of common right the charge of repairing all common bridges, lies upon the county wherein they are, unleſs part thereof be within a franchiſe; in which caſe it is ſaid, that ſo much as is within the franchiſe, ſhall be repaired by thoſe of the franchiſe.

(*a*) 2. Inſt. 701. Sum. 143. C. Car. 365. 6. Mod. 317. Salk. 358, 359.

(a) 2. Inſt. 700, 701. Sum. 143. Dalton c. 14. Far. 54, 55.

Sect. 2. Alſo it ſeemeth to be (*a*) certain, that ſuch charge may be caſt upon a corporation aggregate, either in reſpect of a ſpecial tenure of certain lands, or in reſpect of a ſpecial preſcription, and that it may be caſt upon any other perſons (1) by reaſon of ſuch a ſpecial tenure, as hath been ſhewn more at large under the ſecond general head of the precedent chapter.

(1) Therefore a tenant at will of a houſe which adjoins to a common bridge, although he is not bound as between landlord and tenant to repair the houſe, yet if it become dangerouſly ruinous to the neceſſary intercourſe of the bridge, as tenant at will only, he is bound, *by reaſon of his poſſeſſion*, to repair it, ſo far as to prevent the public being prejudiced. Ld. Raym. 856.

(b) 2. Inſt. 701. 6. Mod. 307. Salkeld 359. C. Car. 365.

But it is (*b*) ſaid, that a man ſhall not be bound to repair a new bridge built by himſelf, for the common good; but that the county ſhall be bound to repair it, if it become of public convenience.

Burr. 2594. 1. Bl. Rep. 685.

† Therefore where a particular diſtrict rebuilt a foot bridge over a more convenient part of the ſtream, and converted it into a bridge for horſes, carts, and carriages; as the diſtrict was not bound by cuſtom to build or repair ſuch a bridge, but a foot bridge only, and as they built a quite different bridge, in a different place, which proved of common public utility to the county, the Court were unanimous, that the county, and not the diſtrict, were bound to repair it.

As to the ſecond particular, *viz.* In what manner perſons bound to ſuch repairs are to be proceeded againſt.

(c) 1. Jon. 273. Popham 192. 6. Mod. 307. Salkeld 358. 12. Mod. 198. 409. Ld. Raym. 725. 792. 804. 856. 858. 1169. 1175, 1249.

Sect. 3. It ſeemeth to be clear (*c*), that any particular inhabitant or inhabitants of a county, or tenant or tenants of land charged to the repairs of ſuch a bridge, may be made defendants to an indictment for not repairing it, and be liable to pay the whole fine aſſeſſed by the Court for the default of ſuch repairs, and ſhall be put to their remedy at law for a contribution from thoſe who are bound to bear a proportionable ſhare in the charge, for the neceſſity of the caſe requires the greateſt expedition in caſes of this nature.

11. Mod. 56. F. N. B. 235. Regiſter 268. 2. Inſt. 700. Hard. 131.

Cowp. 687.

† But no action will lie by an individual againſt the inhabitants of a county, for an injury ſuſtained in conſequence of a county bridge being out of repair.

(d) 2. Lev. 112. Popham 192. 43. Aſſize 37. 8. Mod. 120.

Sect. 4. Alſo it hath been (*d*) reſolved, that it is not ſufficient for the defendants to an indictment for not repairing a bridge, to excuſe themſelves by ſhewing either that they

43. Aſſize 37. B. Preſentment, 22, and 29.

are

are not bound to repair the whole, or any part of the bridge, without ſhewing what other perſon is bound to repair the ſame; and it is ſaid, that in ſuch caſe the whole charge ſhall be laid upon ſuch defendants, by reaſon of their ill plea.

Sect. 5. It is ſaid, that where ſuch defendants plead, that *A. B.* ought to repair the bridge mentioned in the indictment, and take *a traverſe* to the charge againſt themſelves, THE ATTORNEY-GENERAL in this ſpecial caſe may take *a traverſe upon a traverſe*, and inſiſt that the defendants are bound to the repairs, and traverſe the charge alledged againſt *A. B.* and that an iſſue ought to be taken on ſuch ſecond traverſe; and that THE ATTORNEY-GENERAL may afterwards ſurmiſe, that the defendants are bound to repair it, and that the whole matter ſhall be tried by an indifferent jury, &c. See 1. Sid 140. 2. Lev. 112.

† But the indictment ought to ſhew what ſort of bridge it is, whether for carts and carriages, or for horſes, or foot men only. And if the duty to repair ariſe by reaſon of the tenure of certain lands, the indictment muſt ſhew where thoſe lands lie. Ld. Raym. 1175. 2. Hale 181.

Sect. 6. It ſeems, that no inhabitant of a county ought to be a juror for the trial of an iſſue, whether the county be bound to ſuch repairs or not; but it is ſaid, that he may be a good witneſs (2). 6. Mod. 307. Burr. 859.

(2) The ſame objection may lie againſt the juſtices, where they are all intereſted; in which caſe the trial ſhall be in the next county. Vide Burrow 859, 860. But by 1. Ann. an inhabitant may be a witneſs. Vide poſt. ſect. 20.

As to THE SECOND POINT, *viz.* In what manner ſuch bridges are to be repaired by ſtatute.

Sect. 7. And by 22. Hen. 8. c. 5. it is enacted, "That "the juſtices of peace in every ſhire of this realm, franchiſe, "city, or borough, or four of them at the leaſt, whereof one "to be of the *quorum*, may inquire, hear, and determine, in "their general ſeſſions, of all manner of annoyances of "bridges broken in the highways, to the damage of the "king's liege people, and to make ſuch proceſs and pains "upon every preſentment afore them, for the reformation "of the ſame, againſt ſuch as owen to be charged for the "making or amending of ſuch bridges, as the king's juſtices "of his bench uſe commonly to do; or as it ſhall ſeem by "their diſcretions to be neceſſary and convenient for the "ſpeedy amendment of ſuch bridges." 2. Inſt. 701, 702. 6. Mod. 255. A remedy to repair decayed bridges. 13. Coke 33. Popham 192.

Sect. 8. And by 22. Hen. 8. c. 5. ſ. 2. & 3. it is further enacted, "That where it cannot be known and proved what "hundred, Juſtices may proceed againſt defaulters.

" hundred, riding, wapentake, city, borough, town or pariſh, " nor what perſon certain, or body politick, ought of right " to make ſuch bridges decayed, by reaſon whereof ſuch de- " cayed bridges, for lack of knowledge of ſuch as owen to " make them, for the moſt part lie long without any amend- " ment, to the great annoyance of the king's ſubjects; in " every ſuch caſe the ſaid bridges, if they be without city or " town corporate, ſhall be made by the inhabitants of the " ſhire or riding, within which the ſaid bridge decayed ſhall " happen to be: and if it be within any city or town cor- " porate, then by the inhabitants of every ſuch city or town " corporate wherein ſuch bridges ſhall be. And if part of " any ſuch bridges ſo decayed happen to be in one ſhire, " riding, city, or town corporate, and the other part thereof " in another ſhire, riding, city or town corporate, or if part " be within the limits of any city or town corporate, and " part without, or part within one riding, and part within " another, that then in every ſuch caſe the inhabitants of " the ſhires, ridings, cities or towns corporate, ſhall be " charged and chargeable to amend, make and repair ſuch " part and portion of ſuch bridges ſo decayed, as ſhall lie " and be within the limits of the ſhire, riding, city or town " corporate, wherein they be inhabited at the time of the " ſame decays."

Juſtices may tax the inhabitants. Vide 1. Keb. 422.

Sect. 9. And by 22. Hen. 8. c. 5. ſ. 4. it is further enacted, " That in every ſuch caſe where it cannot be " known and proved what perſons, lands, tenements, and " bodies politick owen to make and repair ſuch bridges, that " for ſpeedy reformation and amending of ſuch bridges, the " juſtices of the peace within the ſhires or ridings wherein " ſuch decayed bridges being out of cities and towns cor- " porate, and if it be within cities or towns corporate, then " the juſtices of peace within every ſuch city or town cor- " porate, or four of the ſaid juſtices at the leaſt, whereof " one to be of the *quorum*, within the limits of their ſeveral " commiſſions and authorities, may call before them the " conſtables of every town and pariſh, being within the " ſhire, riding, city or town corporate, as well within li- " berty as without, wherein ſuch bridges or any parcel " thereof ſhall happen to be, or elſe two of the moſt honeſt " inhabitants within every ſuch town or pariſh in the ſaid " ſhire, riding, city or town corporate, by the diſcretion " of the ſaid juſtices of peace, &c. And at and upon the " appearance of ſuch conſtables or inhabitants, the ſaid juſ- " tices of peace, &c. with the aſſent of the ſaid conſtables or " inhabitants, may tax, and ſet every inhabitant in any ſuch " city, town or pariſh, within the limits of their commiſ- " ſions and authorities, to ſuch reaſonable aid and ſum of " money,

Vide infra 12. Geo. 2. which ſeems to make this part of the act uſeleſs.

" money, as they ſhall think by their diſcretions convenient " and ſufficient for the repairing, re-edifying, and amend- " ing of ſuch bridges."

Sect. 10. And by 22. Hen. 8. c. 5. ſ. 4. " After ſuch " taxation made, the ſaid juſtices ſhall cauſe the names and " ſums of every particular perſon ſo by them taxed, to be " written in a roll indented; and ſhall alſo have power and " authority to make two collectors of every hundred, for " collection of all ſuch ſums of money by them ſet and taxed; " which collectors receiving the one part of the ſaid roll " indented, under the ſeals of the ſaid juſtices, ſhall have " power and authority to collect and receive all the particular " ſums of money therein contained, and to diſtrain every " ſuch inhabitant as ſhall be taxed, and refuſe payment " thereof, in his lands, goods and chattels, and to ſell ſuch " diſtreſs, and of the ſale thereof retain and perceive all the " money taxed, and the reſidue (if the diſtreſs be better), to " deliver to the owner thereof."

Two collectors to be made. Sed vide infra 1. Ann c. 18, &c.

Sect. 11. And by 22. Hen. 8. c. 5. ſ. 4. " The ſame, " juſtices, or four of them, within the limits of their com- " miſſions and authorities, may alſo name and appoint two " ſurveyors(3), which ſhall ſee every ſuch decayed bridge re- " paired and amended from time to time as often as need " ſhall require, to whoſe hands the ſaid collectors ſhall pay " the ſaid ſums of money taxed and by them received; and " that the collectors and ſurveyors, and every of them, and " their executors and adminiſtrators, and the executors and " adminiſtrators of them, and every of them, from time to " time, ſhall make a true declaration and account to the juſ- " tices of peace of the ſhire, riding, city, or town corporate, " wherein they ſhall be appointed collectors or ſurveyors, " or to four of the ſame juſtices, whereof one to be of the " *quorum*, of the receipts, payments, and expences of the " ſaid ſums of money."

(3) The office of ſurveyors, for the ſake of convenience, is uſually annexed by the juſtices to the office of the high conſtables, 1. Burn, 280.

Sect. 12. And by 22. Hen. 8. c. 5. ſ. 4. " If they or " any of them refuſe that to do, that then the ſame juſtices " of peace, or four of them, from time to time, by their " diſcretions, ſhall have power and authority to make pro- " ceſs againſt the ſaid collectors and ſurveyors, and every " of them, their executors and adminiſtrators, and the exe- " cutors and adminiſtrators of every of them, by attach- " ments under their ſeals, returnable at the general ſeſſions " of peace: and if they appear, then to compel them to ac- " count, as is aforeſaid; or elſe if they or any of them re- " fuſe that to do, then to commit ſuch of them as ſhall re- " fuſe to ward, there to remain without bail or mainpriſe, " till the ſaid declaration and account be truly made."

Juſtices may make proceſs into every ſhire.

Sect. 13. And by 22. Hen. 8. c. 5. ſ. 5. it is further enacted, "That where any bridge or bridges lying in one ſhire or "riding, and ſuch perſons inhabitants, bodies politick, lands "or tenements, which owen to be charged with the making "and amending of ſuch bridges lien and abiden in another "ſhire or riding, or where ſuch bridges been within any "city or town corporate, and the perſons inhabitants, bo-"dies politick, lands or tenements, that owen to make or "repair any ſuch bridges lien and been out of the ſaid cities "and towns corporate, in every ſuch caſe the juſtices of "peace of the ſhire, city, or town corporate, within which "ſuch decayed bridges, or any part thereof, ſhall happen to "be, ſhall have power to enquire, hear, and determine all "ſuch annoyances, being within the limits of their com-"miſſions and authorities. And if the annoyance be pre-"ſented, then to make proceſs into every ſhire within this "realm, againſt ſuch as owen to make or amend any ſuch "bridges ſo preſented before them to be decayed, to the an-"noyance and let of the paſſage of the king's ſubjects, and "to do further in every behalf in every ſuch caſe, as they "might do by authority of the ſaid act, in caſe that the per-"ſons, &c. which owen to be charged to the amending or "making of ſuch bridges, &c. were in the ſame ſhire, &c. "where ſuch annoyance ſhall happen to be."

Which the ſheriffs ſhall ſerve.

Sect. 14. And by 22. Hen. 8. c. 5. ſ. 5. "All ſheriffs, "and bailiffs of liberties and franchiſes, ſhall truly ſerve and "execute proceſs as ſhall come to their hands from the ſaid "juſtices of peace, afore whom any preſentment ſhall be "had for any ſuch annoyance, according to the tenor and "effect of the ſaid proceſs to them directed, &c. on pain to "make ſuch fine as ſhall be ſet on them by the diſcretion of "the ſaid juſtices."

Cinque ports excepted.

Sect. 15. But by 22. Hen. 8. c. 5. ſ. 6. it is provided, "That nothing in the ſaid act contained ſhall be prejudicial "to the liberties of the five ports, or members of the ſame."

Sect. 16. And by 22. Hen. 8. c. 5. ſ. 7. for reformation of annoyances of bridges within the ſaid ports and members, it is further enacted, "That the warden, mayors, and bai-"liffs elected, and jurats of the ſame ports, and every of "them, have power and authority to enquire, hear, and de-"termine all manner of common annoyances of bridges "within the ſame ports and members, and to make ſuch "proceſs, pains, taxations, and all other things within the "ſame ports and members, as the juſtices of the peace may "do in other ſhires or places out of the ſame ports, by vir-"tue of the ſaid act in every behalf."

Sect.

Sect. 17. And by 22. Hen. 8. c. 5. ſ. 8. it is further enacted, "That the ſaid juſtices, &c. may allow ſuch reaſonable coſts and charges to the ſaid ſurveyors and collectors, as by their diſcretion ſhall be thought convenient." Allowance to collectors.

Sect. 18. And by 22. Hen. 8. c. 5. ſ. 9. it is further enacted, "That ſuch part and portion of the highways in every part of this realm, as well within franchiſe as without, as lie next adjoining to any ends of any bridges within this realm, diſtant from any of the ſaid ends by the ſpace of three hundred foot, be made, repaired, and amended, as often as need ſhall require; and that the juſtices of peace in every ſhire of this realm, franchiſe, city, or borough, or four of them at the leaſt, whereof one to be of the *quorum*, within the limits of their commiſſions and authorities, may enquire, hear, and determine in their general ſeſſions, all manner of annoyances of and in ſuch highways, ſo being and lying next adjoining to any ends of bridges within this realm, diſtant from any one of the ends of ſuch bridges three hundred foot, and to do in every thing concerning the making, repairing, and amending ſuch highways, &c. in as large and ample manner as they might and may do to and for the making, repairing, and amending of bridges, by virtue of the ſaid act." Of roads at the ends of bridges.

In the conſtruction of this ſtatute, the following opinions have been holden.

Sect. 19. FIRST, That no private bridges are within the purview thereof, but only ſuch as are common in the highways, where all the king's liege people have or may have paſſage. 2 Inſt. 701. Salk. 359. 6. Mod. 255, 256.

Sect. 20. SECONDLY, That unleſs the juſtices of the peace of a county, or town, &c. be four in number, and one of them of the *quorum*, they have no manner of juriſdiction by virtue of this ſtatute. 2. Inſt. 701, 702.

Sect. 21. But it is ſaid, that the juſtices of the peace of the county in which ſuch town, being not a county of itſelf, and wanting ſuch a number of juſtices, ſhall lie, may, by virtue of the firſt clauſe of the ſtatute, determine all annoyances of bridges within ſuch town, &c. if it be known what perſons in certain are bound to repair the ſame: but if it be not known, it ſeems that ſuch annoyances are left to the remedy of the common law, becauſe the clauſe, which in ſuch caſe authoriſes the juſtices of the peace to tax all the inhabitants, ſeems expreſsly to confine the power of taxing the inhabitants of ſuch towns to their own juſtice, &c.

2. Inſt. 703.

Sect. 22. THIRDLY, That all houſholders dwelling in any county or town, &c. whether they occupy any lands or not; and alſo all perſons who have lands in their own poſſeſſion or manurance, whether they dwell in the ſame county, &c. or not; and alſo all bodies politick, either reſiding in, or having lands in their own hands in a county, &c. are liable to be taxed as inhabitants, within the meaning of the ſtatute.

2. Inſt. 704. Vide 1. Keb. 91.

Sect. 23. FOURTHLY, That the taxation to be made in purſuance of the ſtatute ought to be aſſeſſed diſtinctly on each inhabitant, and not on a whole hundred, pariſh, or town in general.

2. Inſt. 704.

Sect. 24. FIFTHLY, That all privileges of exemptions and diſcharges from contribution to the repairs of decayed bridges, whether ſuch exemptions were originally derived from charter or act of parliament, or any other foundation whatſoever, are taken away by the expreſs words of the ſtatute, "That the juſtices, &c. ſhall tax and ſet every "inhabitant."

1. Keble, 68.

Sect. 25. It hath been queſtioned, whether a borough which hath no bridge within its own limits, be not liable to contribute to the repairs of a county bridge.

Vide the next ſection, where the charges are directed to be paid out of the county rate. Moore 103. 2. Hale 181.

† *Sect.* 26. And by 1. Anne, ſt. 1. c. 18. to prevent more money being raiſed than is neceſſary, and to direct the application of what is raiſed, it is enacted, "That the "juſtices in ſeſſions ſhall have full power, upon due pre- "ſentment to them made that any bridge within their "reſpective juriſdictions is out of repair, and which by "them hath uſually been or ought to have been repaired, "to aſſeſs every town, pariſh, or place, within their re- "ſpective commiſſions, in the uſual proportions toward the "repair of bridges, to be levied and collected by the con- "ſtables, or by ſuch other perſon or perſons as the ſaid "juſtices in ſeſſions ſhall direct, and paid by the ſaid col- "lectors to the high conſtables of every hundred, in ſix "days after they ſhall have received the ſame, and the high "conſtables ſhall in ten days after the receipt thereof pay "the ſame to ſuch perſon as the ſaid juſtices ſhall, in "ſeſſions, appoint to be treaſurers of the ſame (allowing "the ſaid perſons not exceeding three-pence in the pound), "to be employed and accounted for according to the orders "and directions of the ſaid juſtices for and towards the "amending of ſuch decayed bridges, and the highways at "the end of ſuch bridges, as need ſhall require, which "aſſeſſments ſhall be levied by diſtreſs within ten days after "demand;

" demand; and every conſtable or other perſon who ſhall " neglect to aſſeſs, collect, or pay the money as aforeſaid, " ſhall forfeit forty ſhillings, and every treaſurer that ſhall " pay any money but by the order of the juſtices as afore- " ſaid, ſhall forfeit five pounds; and all fines, iſſues, penal- " ties, or forfeitures, upon any preſentment or indictment " for not repairing, &c. ſhall be paid into the hands of the " treaſurer for the purpoſes aforeſaid, and not into the " exchequer. And all queſtions concerning the repairs " aforeſaid, ſhall be determined in the ſame county wherein " they lie, and no preſentment or indictment ſhall be re- " moved by *certiorari* (*a*) out of the county into any other " court, except the right of repairing by private perſons " (or by 5. and 6. Will. & Mary, c. 11. the right between " pariſhes) came in queſtion, and on which queſtion inha- " bitants are admiſſible witneſſes. The general iſſue may " be pleaded, and this act, and the 22. Hen. 8. may be given, " with any ſpecial matter in evidence, and the plaintiff " ſhall be liable to pay double coſts."

(*a*) A *certiorari* lies upon an order of juſtices concerning a private bridge, purſuant to a private ſtatute; but they ought to return the act upon which their order is founded. Dalt. 504. And it has been determined, that this act of Queen Anne extends only to bridges where the county is charged to repairs, and that where a private perſon or pariſh is charged, the 5. and 6. Will. 3. c. 11. hath allowed the granting a *certiorari*. Strange 900.

† *Sect.* 27. It is alſo enacted by 12. Geo. 2. c. 29. ſ. 13. for the more eaſy aſſeſſing, levying, and collecting the county rates, " That no part of the money to be raiſed and " collected in purſuance of this act ſhall be applied to the " repairs of any bridges, &c. until preſentments be made by " the reſpective grand juries, at the aſſize, great ſeſſions, " general gaol delivery, or general or quarter ſeſſions of the " peace, held for the county or place, of the inſufficiency, " inconveniency, or want of reparation of their bridges, " &c. &c."

The expence of repairing bridges to be raiſed by a county rate.

† *Sect.* 28. Alſo it is further enacted, ſ. 14. " That " when any public bridges, ramparts, banks, or cepts, or " other works, are required to be repaired at the expence of " any county or place, the juſtices of the peace at their grand " or quarter ſeſſions reſpectively, or the greater part of them, " then and there aſſembled, if they think proper and conve- " nient, after preſentment to be made as aforeſaid of the want " of reparation of ſuch bridges, ramparts, banks, or cepts, " may contract and agree with any perſon or perſons for re- " building, repairing, and amending the ſame, and all other " works which are to be repaired and done by aſſeſſment in " the reſpective counties or places, for any term or terms of " years not exceeding ſeven years at a certain annual ſum, " payment or allowance for the ſame; ſuch contractor or " con-

Juſtices may contract for the repair of bridges.

" contractors giving ſufficient ſecurity for the due perform-
" ance thereof to the clerk of the peace or other officer of the
" place reſpectively; and ſuch juſtices at their reſpective
" general or quarter ſeſſions, ſhall give public notice of their
" intention of contracting as aforeſaid; and ſuch contracts
" ſhall be made at the moſt reaſonable price propoſed; and
" all contracts when agreed to, and all orders relating thereto
" ſhall be entered in a book to be kept by the clerk of the
" peace or other officer reſpectively for that purpoſe, and kept
" among the records of the place, to be from time to time in-
" ſpected by any of the ſaid juſtices within the limits of their
" commiſſions, and by any perſon or perſons employed con-
" cerning the ſame without fee or reward."

Juſtices may purchaſe the adjoining land to rebuild.

† *Sect.* 29. It is alſo further enacted by 14. Geo. 2. c. 33. " That the juſtices of the peace of any county or
" place, at their general ſeſſions or general quarter-ſeſſions
" aſſembled, or the major part of them, ſhall have power to
" purchaſe of, or agree, or contract with any perſon or
" perſons, bodies politick or corporate, for any piece or
" parcel of land adjoining or near to any county bridge
" within the limits of their reſpective commiſſions, for the
" more commodious enlarging, or convenient rebuilding
" of the ſame; which pieces or parcel of land ſhall not
" exceed one acre in the whole for any ſuch bridge, and
" ſhall from time to time be paid for by the reſpective
" county treaſurers out of any monies raiſed or to be raiſed
" by virtue of 12. Geo. 2. c. 29. ſuch treaſurers being
" thereunto authorized by orders under the hands and ſeals
" of the juſtices at ſeſſions, or the major part of them;
" which lands ſo purchaſed ſhall be conveyed as the ſaid
" juſtices in ſeſſions ſhall appoint, in truſt, for the uſes and
" purpoſes of enlarging or rebuilding ſuch bridges reſpec-
" tively."

Rex v. Juſtices of Glamorganſhire, 5. Term Rep. 279.

† *Sect.* 30. It hath been determined, that if the juſtices at ſeſſions appoint a committee of twelve magiſtrates to inſpect the ſtate of a county bridge, and to make any new contract for repairing or rebuilding, to be executed by the clerk of the peace, on behalf of the county, and they afterwards make an order, adopting the contract for the rebuilding propoſed by the committee, which order is executed by the clerk, and confirmed by the juſtices at a ſubſequent ſeſſions, the acts of the committee are the acts of the ſeſſions, and the authority given to the committee and exerciſed by them is good.

CHAP-

CHAPTER THE SEVENTY-EIGHTH.

OF NUSANCES

RELATING TO

PUBLIC HOUSES.

FOR the better underſtanding of nuſances relating to public houſes, I ſhall conſider,

1. In what manner they are prevented and reſtrained by the common law.

2. In what manner by ſtatute.

As to THE FIRST POINT, *viz.* In what manner nuſances relating to public houſes are prevented and reſtrained by the common law.

Sect. 1. It ſeems to be agreed, that the keeper of an inn may, by the common law, be indicted and fined, as being guilty of a public nuſance (*a*), if he uſually harbour thieves, or perſons of ſcandalous reputation, or (*b*) ſuffer frequent diſorders in his houſe, or take exorbitant prices, or ſet (*c*) up a new inn in a place where there is no manner of need of one, to the hindrance of other ancient and well-governed inns, or (*d*) keep it in a place in reſpect of its ſituation wholly unfit for ſuch a purpoſe.

(*a*) Palm. 374. 2. Roll. 345.
(*b*) Sum. 146 Cro. Car. 549. Dalton c. 7.
(*c*) Sum. 146.
(*d*) 2. Hale 174. Dalt. c. 7. Palm. 374. 2. Roll. 345.

Sect. 2. And it ſeems alſo to be clear, that if one who keeps a common inn, refuſe either to receive a traveller as a gueſt into his houſe, or to find him victuals, or (*e*) lodging, upon his tendering him a reaſonable (*f*) price for the ſame, he is not only liable to render (*g*) damages for the injury in an action on the caſe at the ſuit of the party grieved, but may alſo be (*h*) indicted and fined, at the ſuit of the king. Alſo it is ſaid, that he may be compelled by the conſtable (*i*) of the town to receive and entertain ſuch a perſon as his gueſt, and that it is no way (*k*) material whether he have any ſign before his door or not, if he make it his common buſineſs to entertain paſſengers.

(*e*) Palm. 374. 2. Roll. 345.
(*f*) 10. H. 7. 8. 39. H. 6. 18, 19. 9. Coke 87.
(*g*) Dy. 158. B. Ac. ſur Caſ 76. 92.
(*h*) H. P. C. 146. Dalton c. 7.
(*i*) 5. E. 4. 2. Cro. Eliz. 622. Brownlow 254. Keilw. 50. 11. and 12. Will. 3. c. 15. ſ. 2. 1 Salk. 388. Moor 877. 12. Mod. 255. Clayt. 97. Godbolt 346. Carth. 150. Shower 268.

(*k*) Palm. 374. 2. Roll. 345, 346. 8. Co. Caley's caſe. Blackerby 169.

Sect

(a) 2. Roll. Ab. 84, 85.

Sect. 3. It ſeems to have been always clearly (*a*) agreed, that he who has an inn by preſcription, may lawfully enlarge it upon the ſame land which has been uſed with it, either by erecting new buildings thereon, or turning ſtables into chambers of entertainment, and that he ſhall have the ſame privilege in ſuch new parts of his houſe as in any of the old.

(b) 2. Roll. A. 84. Salk. 45. 2. Roll. 345. Palm. 367. 374. 2. Keb. 506. 1. Bulſ. 109. Salk. 45. Blackerby 170. Godbolt 345. Hutton 100. Cro. Jac. 528. Dalton 56. 133. 204. 1. Burrow 22.

Sect. 4. Alſo it ſeems to be (*b*) ſettled at this day, that any perſon may lawfully ſet up a new inn, unleſs it be inconvenient to the publick in ſome of the reſpects taken notice of in the firſt ſection, and that he has no need of any licence from the king for this purpoſe, for the keeping of an inn is no franchiſe, but a lawful trade, open to every ſubject. But if an inn degenerate into an alehouſe, by ſuffering diſorderly tippling, it ſhall be deemed as ſuch.

Sect. 5. But it is ſaid by DALTON, that innkeepers ought to have *licence*, and be bound by *recognizance*, for keeping good order, as alehouſe-keepers are.

Sect. 6. And by the commiſſion of the peace, two juſtices, one whereof ſhall be of the *quorum*, may inquire of innholders, and of all and ſingular other perſons, who ſhall offend in the abuſe of weights and meaſures, or in the ſale of victuals, againſt the form of the ordinances in that behalf made.

Vide F. N. B. 172. Regiſter 184. Raſt. 686.

As to THE SECOND POINT, *viz.* In what manner nuſances of this kind are prevented and reſtrained by ſtatute, I ſhall conſider,

1. By whom public houſes are to be licenſed.

2. At what time the licence is to be granted.

3. In what manner the licenſing day ſhall be appointed.

4. In what manner licences ſhall be granted in cities and corporations.

5. The manner of obtaining a licence for a new houſe.

6. The manner of continuing a licence to an old houſe.

7. What perſons muſt take out licences.

8. In what manner the recognizance ſhall be taken.

9. Of

9. Of the forfeiture of the recognizance.

10. Of ſuppreſſing an unlicenſed houſe.

11. Of the penalties of ſelling without licence.

12. Of extortion in public houſes.

13. Of publicans ſuffering tippling and drunkenneſs.

I. As to the firſt particular, *viz.* By whom public houſes are to be licenſed.

† *Sect.* 7. By 5. and 6. Edw. 6. c. 25. ſ. 1. 6. and 26. Geo. 2. c. 31. "None ſhall be admitted or ſuffered to "keep any common alehouſe or tippling-houſe, except in "fairs, but ſuch as ſhall be allowed in the open ſeſſions, or "by two juſtices of peace, whereof one to be of the *quorum*."

And upon theſe clauſes the following conſtructions have been made.

† *Sect.* 8. FIRST, that the exception reſpecting fairs is made from the neceſſity of accommodating the perſons who reſort to them, and therefore it ſeems only to allow the unlicenſed ſale in the place where the common fair is held, and not in any private houſe which may be within the limits of the town where ſuch fair is kept, eſpecially where there are licenſed alehouſes ſufficient: and thoſe who ſhall brew ſuch ale or beer, to be ſold by them in fairs, muſt take care to give notice to the gaugers, that the ſame may be ſurveyed; for though they are exempted from taking out a licence, they muſt pay the duties of exciſe.

† *Sect.* 9. SECONDLY, That houſes at public watering-places, where they take in lodgers and boarders, coming to uſe the waters during the ſeaſon, and dreſs their victuals, and ſupply them with ale, beer, and other liquors, and entertain their horſes, at ſo much a-day, but ſell to no other perſons, are not ſuch public houſes as require to be licenſed." Parker *v.* Flint, 12. Mod. 254.

† *Sect.* 10. But by 26. Geo. 2. c. 13. ſ. 11. "No juſtice "of the peace, being a common brewer of ale or beer, inn-"keeper or diſtiller, or a ſeller of or dealer in ale or ſpiri-"tuous liquors, or intereſted in any of the ſaid trades, or "being a victualler or maltſter, ſhall be capable, or have any "power to grant licences for ſelling ale or beer, or any "other liquors, but the ſame ſhall be void." No juſtice who deals in malt or ſpirituous liquors ſhall interfere in granting licences.

As

As to the ſecond particular, At what *time* ſuch licence ſhall be granted.

The manner and time of granting licences.

† *Sect.* 11. By 2. Geo. 2. c. 28. ſ. 11. it is recited, "That many inconveniences have ariſen from perſons being licenſed to keep inns and common alehouſes by juſtices of the peace, who, living remote from the places of abode of ſuch perſons, may not be truly informed as to the occaſion or want of ſuch inns or common alehouſes, or the characters of the perſons applying for licence to keep the ſame;" it is therefore enacted by the 26. Geo. 2. c. 31. ſ. 4. "That no "licences for the purpoſes aforeſaid ſhall be granted but on "the *firſt day* of *September* yearly, or within twenty days 12. Mod. 254. "after; and that ſuch licence ſhall be made for one year "only, to commence on the *twenty-ninth day* of the ſaid "*September*."

2. Seſſ. Ca. 183. Andrews 81.

† *Sect.* 12. It is not neceſſary to ſet forth ſpecially in the licence that it was granted at a general meeting of the juſtices holden for the diviſion; and therefore a conviction for keeping an alehouſe without ſuch licence, is not good upon the evidence of the licence only, but there muſt be other evidence.

As to the third particular, *viz.* In what manner the *licenſing day* ſhall be appointed.

For the penalties of writing licences without being legally ſtamped, vide 1. Ann ſt. 2 c. 22 ſ. 6. 9. Ann. c. 23. 6. Geo. 1. c. 21. ſ. 56. 29. Geo. 2. c. 12. ſ. 20.

† *Sect.* 13. And by 26. Geo. 2. c. 31. ſ. 4. "The day "and place for granting ſuch licences ſhall be appointed by "two or more of the juſtices acting for the diviſion (where "the perſon to be licenſed dwells), by a warrant under "their hands and ſeals at leaſt ten days before ſuch meeting, "directed to the high conſtable or high conſtables of the "ſaid diviſion, requiring him or them to order his or their "reſpective petty conſtables or other peace-officers to give "notice to the ſeveral inn keepers and alehouſe-keepers "within their reſpective conſtablewicks of the day and "place of ſuch meeting; and all licences hereafter granted "at any other time or place ſhall be null and void to all "intents and purpoſes whatſoever."

In Middleſex and Surrey, the juſtices at the general licenſing meetings to appoint ſpecial ones, &c.

† *Sect.* 14. By 32. Geo. 3. c. 59. ſ. 2. it is provided, "That in the reſpective counties of *Middleſex* and *Surrey*, "the juſtices aſſembled at the general licenſing meetings "holden for the reſpective diviſions within the ſame, ſhall "have full power and authority, and they are hereby directed "and required to appoint not leſs than ſix, nor more than "eight ſpecial days of meeting at different equal periods,

"holden

" holden as near as may be, in each year next enſuing ſuch ge-
" neral licenſing meetings; on which days it ſhall and may
" be lawful for two or more juſtices acting in and for the ſaid
" diviſions to meet, and to grant or continue licences in the
" caſes and in the manner and for the time herein-before
" mentioned; and the juſtices aſſembled at the ſaid general
" licenſing meetings are hereby directed and required to
" cauſe due notice to be given of the times and places
" at which ſuch ſpecial meetings ſhall reſpectively be
" holden."

As to the fourth particular, *viz.* In what manner licences ſhall be granted in cities and corporations.

† *Sect.* 15. By 26. Geo. 2. c. 31. ſ. 16. it is provided, " That nothing contained in this ſtatute ſhall extend, or be " conſtrued to extend, to alter *the time* or times of granting " ſuch licences for keeping of common inns or alehouſes " in any city or town-corporate."

† *Sect.* 16. It has been decided, that this proviſion of the ſtatute does not exempt cities and towns-corporate from the operation of the other parts of the ſtatute, but that city and corporation magiſtrates muſt give the ſame notice of their meeting to grant licences as juſtices for a county give. Rex *v.* Downs, 3. Term Rep. 560.

† *Sect.* 17. It hath alſo been decided, That where two ſets of magiſtrates have a concurrent juriſdiction, and one appoints a meeting to grant ale licences, their juriſdiction attaches ſo as to exclude the other appointing a ſubſequent meeting, though they may all meet together the firſt day; and if after ſuch appointment the other ſet of magiſtrates meet on a ſubſequent day, and grant other licences, their proceeding is illegal, and the ſubject of an indictment. Rex *v.* Sainſbury, 4. Term Rep. 451.

As to the fifth particular, *viz.* The manner of obtaining a licence for a new houſe.

† *Sect.* 18. By 26. Geo. 2. c. 31. ſ. 2. it is enacted, for the better preventing diſorders in alehouſes, " That no " licence ſhall be granted to any perſon not licenſed the " year preceding, unleſs ſuch perſon produce at the general " meeting of the juſtices in *September*, a certificate under " the hands of the parſon, vicar, or curate, and the major " part of the churchwardens and overſeers, or elſe of three " or four reputable and ſubſtantial houſeholders and inha- " bitants of the pariſh or place where ſuch alehouſe is to 1. Burr. 557, 558.

" be,

" be, ſetting forth that ſuch perſon is of good fame, and of " ſober life and converſation; and it ſhall be mentioned in " ſuch licence that ſuch certificate was produced, otherwiſe " ſuch licence ſhall be null and void."

See 32. Geo. 3. c. 59. ſ. 5. poſt.

† *Sect.* 19. But by 26. Geo. 2. c. 31. ſ. 16. it is provided, " That nothing herein contained ſhall extend, or be " conſtrued to extend, to oblige perſons not licenſed the " year preceding to produce certificates in any city or town-" corporate."

Rex v. Young, 1. Burr. 556.

† *Sect.* 20. It is ſaid, that a certificate being ſigned by three or four reputable and ſubſtantial houſeholders without the miniſter and churchwardens, is ſufficient.

† *Sect.* 21. It ſeems agreed, that although a certificate is not neceſſary in cities and towns-corporate, yet the magiſtrates may exerciſe their diſcretion with reſpect to the propriety of granting or refuſing a licence, and therefore a *mandamus* will not lie to compel the allowance of a licence.

Rex v. Downes, 3. Term Rep. 560.

† *Sect.* 22. But it ſeems not to be ſettled whether *Weſtminſter* is a city within the meaning of this act.

Rex v. Young and Pitts, 1. Burr. 556.

† *Sect.* 23. It is agreed, that the juſtices are not obliged to diſcloſe the reaſons which induce them to grant or refuſe a licence.

Rex v. Athay, 1. Burr. 653.

(*a*) Williams v. Davis, 3. Burr. 1317.

(*b*) Rex v. Hare, Burr. 1716. 1786.

† *Sect.* 24. But if this diſcretion with which they are entruſted be not exerciſed in a fair and honeſt way, but perverted to ſiniſter or corrupt purpoſes, as if they refuſe to grant licences to thoſe alehouſe-keepers who voted againſt their recommendation of candidates for members of parliament (*a*), or from motives of private reſentment (*b*), the Court will grant a criminal information.

Rex v. Holland, 1. Term Rep. 692.

† *Sect.* 25. It is alſo ſettled, that an information lies againſt juſtices as well for granting as for refuſing to grant a licence from corrupt motives.

As to the ſixth particular, *viz.* The manner of continuing a licence to an old houſe.

If alehouſe-keepers die or remove, &c. before the expiration of their licences, new ones may be granted to executors or new tenants, till the next licenſing day, on certain conditions.

† *Sect.* 26. By 32. Geo. 3. c. 59. ſ. 1. " If any perſon " duly licenſed to keep an alehouſe, inn, victualling-houſe, " or to ſell ale, beer, or other exciſeable liquors, by retail " in any houſe in *England*, *Wales*, or *Berwick*, ſhall happen

" to

" to die before the expiration of ſuch licence, or if any " perſon ſo licenſed, or the executors, adminiſtrators, or " aſſigns, of any perſon dying ſo licenſed, ſhall remove " from, or yield up the poſſeſſion of ſuch houſe in which " ſuch ale, beer, or other liquors ſhall, by virtue of ſuch " licence, be ſold, and ſhall aſſign ſuch licence, or in caſe " any ſuch houſe ſhall become empty or unoccupied, the " late occupier whereof was duly licenſed at the laſt general " licenſing day in *September*, previous to the time ſuch " houſe became empty or unoccupied, then and in every " ſuch caſe (except as herein is otherwiſe provided) it ſhall " and may be lawful for two or more of his majeſty's " juſtices of the peace for the county, riding, diviſion, or " place, at a petty ſeſſions to be holden within and for the " ſame diviſion in which ſuch houſe ſhall be ſituate, to " grant a licence to the executors, adminiſtrators, or aſſigns " of the perſon ſo dying, who ſhall be poſſeſſed of ſuch " houſe, or to any new tenant or occupier, upon ſuch re- " moval, or the houſe becoming empty or unoccupied as " aforeſaid, to open or continue open ſuch houſe as an ale- " houſe or victualling-houſe, and to ſell ale, beer, and other " liquors aforeſaid there till the next general licenſing day, " ſo as the ſaid licence be ſtamped as by the aforeſaid ſtatutes " in that behalf is directed; or for the ſaid juſtices, in their " diſcretion, to allow to ſuch executors or adminiſtrators, " or other perſons aforeſaid, poſſeſſed of any ſuch licence, " to continue open ſuch houſe for the purpoſe aforeſaid, " under and by virtue of ſuch licence, until the expiration " thereof, every ſuch executor, adminiſtrator, or aſſign, " and every ſuch tenant or occupier, reſpectively, in every " ſuch caſe, obtaining, within thirty days after ſuch death " or removal, or after his or her entering upon the poſ- " ſeſſion of ſuch houſe, and producing to the ſaid juſtices " ſuch certificate, and entering perſonally into ſuch recog- " nizance, with ſuch ſureties as is directed by the ſaid in " part recited act of the twenty-ſixth year of his ſaid late " majeſty, in reſpect to perſons to whom licences are to be " granted by virtue of the ſaid act; which ſaid certificate " and recognizance, with the condition thereof fairly written " or printed, and atteſted by the juſtices granting or allow- " ing ſuch licence, ſhall forthwith, or at the next general " or quarter ſeſſions of the peace at fartheſt, after granting " ſuch licences, be ſent or returned to the clerks of the " peace, to be by them, or other perſons acting as ſuch, " duly entered or filed amongſt the records of the ſeſſions " of the peace."

Certificates and recognizances required by this act to be ſent to the clerk of the peace to be recorded.

† *Sect.* 27. By 32. Geo. 3. c. 59. ſ. 3. it is further enacted, "That if any perſon ſo licenſed as aforeſaid, "within the ſaid counties of *Middleſex* and *Surrey*, or the "executors, adminiſtrators, or aſſigns, of any perſon dying "ſo licenſed, ſhall remove from ſuch houſe, or yield up "the poſſeſſion thereof in manner aforeſaid, or in caſe any "ſuch houſe, within the reſpective counties aforeſaid, ſhall "be or become empty or unoccupied, in manner aforeſaid, "then and in every ſuch caſe, before ſuch licence ſhall be "continued, or a new licence granted to open or continue "open any ſuch houſe as an alehouſe, inn, or victualling-"houſe, the perſon or perſons ſo ſucceeding as the occupier "or occupiers thereof ſhall appear at the next ſpecial meet-"ing to be holden for the diviſion wherein ſuch houſe "ſhall be ſituated; and the juſtices aſſembled at ſuch ſpe-"cial meeting ſhall and may (upon ſuch certificate being "produced to them, and ſuch recognizance being entered "into as is hereinbefore mentioned) grant a licence to ſuch "new tenant or occupier, or in their diſcretion allow a "continuance of any licence before granted, in manner "aforeſaid, to open or continue open ſuch houſe as an "alehouſe, inn, or victualling-houſe, and to ſell ale, beer, "and other exciſeable liquors there, until the next general "licenſing day; any thing in the act contained to the con-"trary thereof notwithſtanding."

No new licences to be granted at *petty ſeſſions* to houſes not licenſed at the general licenſing day.

† *Sect.* 28. By 32. Geo. 3. c. 59. ſ. 4. it is enacted, "That nothing in this act contained ſhall extend, or be "conſtrued to extend, to impower any juſtices of the peace "at any petty ſeſſions to grant any new licence to any "houſe, the occupier whereof was not duly licenſed at the "general licenſing day next before ſuch petty ſeſſions as "aforeſaid."

The times of granting licences not hereby altered.

† *Sect.* 29. By 32. Geo. 3. c. 29. ſ. 5. it is further enacted, "That nothing herein contained ſhall extend, "or be conſtrued to extend, to alter the time or times of "granting licences for keeping of common inns or ale-"houſes, or to oblige perſons not licenſed the year pre-"ceding to produce certificates in the city of *London*."

Perſons entering into licenſed houſes without the authority of the juſtices, liable to penalty.

† *Sect.* 30. By 32. Geo. 3. c. 59. ſ. 6. it is further enacted, "That every perſon ſo entering into the poſſeſſion "of any licenſed alehouſe, inn, or victualling-houſe, who "ſhall ſell any ale, beer, or other exciſeable liquors, unleſs "authorized and impowered ſo to do by the juſtices at the "petty ſeſſions next enſuing after the expiration of ſuch "thirty days, in the manner hereinbefore directed, ſhall

"from

" from thence be liable to all the penalties, puniſhments, and " forfeitures, to which perſons ſelling ale, beer, or other " liquors, by retail, without a licence, are ſubject by an act " paſſed in the fifth year of the reign of his preſent Majeſty, " intituled, *An act for altering the ſtamp duties upon admiſſions " into corporations or companies, and for further ſecuring and " improving the ſtamp duties in* Great Britain; any law, " ſtatute, or uſage, to the contrary notwithſtanding."

Perſons obtaining the neceſſary certificate indemnified till the petty ſeſſions.

† *Sect.* 31. By 32. Geo. 3. c. 59. ſ. 7. it is further enacted, " That the certificate hereinbefore directed to be " obtained by the perſon or perſons requiring to be licenſed " ſhall, after the obtaining thereof, be an indemnity to him, " her, or them, for ſelling any beer, ale, or other exciſeable " liquors, till after ſuch petty ſeſſions ſhall have been held.

Clerk of the peace to record the continuance of licences, &c.

† *Sect.* 32. By 32. Geo. 3. c. 59. ſ. 8. it is further enacted, " That in all caſes where the continuance of a " licence ſhall be allowed, or a new licence ſhall be granted " as aforeſaid, by the juſtices at any petty ſeſſions, the clerk " of the peace for the county, riding, diviſion, or place, " where the houſe is ſituate, ſhall record the ſame, and ſhall " be paid the ſum of one ſhilling for recording the allowing " or granting of every ſuch licence, and no more."

As to the ſeventh particular, *viz.* What perſons muſt take out licences.

No perſons ſhall keep a public houſe without licence.

† *Sect.* 33. By 5. and 6. Edw. 6. c. 25. ſ. 1. 6. and 26. Geo. 2. c. 31. " None ſhall be admitted or ſuffered to " keep any common alehouſe or tippling-houſe, except in " fairs, but ſuch as ſhall be allowed in the open ſeſſions, or " by two juſtices of peace, whereof one to be of the " *quorum*."

Sellers of ſpirituous liquors muſt be licenſed.

† *Sect.* 34. By 2. Geo. 2. c. 28. ſ. 10. " No perſon or " perſon whatſoever ſhall ſell brandy or other diſtilled " liquors by retail, to be drank in his, her, or their houſe or " houſes, but ſuch perſons only as ſhall be thereunto " licenſed, in the ſame manner, and liable to the ſame laws, " as common alehouſe-keepers."

Sellers of wines alſo muſt be licenſed.

For the ſtamp duties on wine licences, vide c. 31. ſ. 7.

† *Sect.* 35. By 10. Geo. 2. c. 17. ſ. 10, 11. " No perſon " or perſons ſhall be enabled to ſell made wines, to be drank " in his, her, or their houſe or houſes, unleſs firſt licenſed " by two juſtices of the county or place where the ſame are " ſold; and no ſuch licence ſhall be granted but to perſons " who ſhall keep public victualling-houſes, inns, coffee-" houſes, or alehouſes."

9. Anne, c. 23. 30. Geo. 2. c. 19. and 31. Geo. 2.

Sellers of ſtrong waters &c. muſt be licenſed. (1) Vide 1. Burn 32. for an obſervation on the double licence required for retailing *malt* liquors and *ſpirituous* liquors, and the attempt made by the exciſe office to keep their juriſdiction diſtinct from the juſtices.

† *Sect.* 36. By 16. Geo. 2. c. 8. ſ. 8. "No perſon ſhall preſume to retail any brandy, rum, arrack, uſquebaugh, geneva, aquavitæ, or any other diſtilled ſpirituous liquors, or ſtrong waters mixed or unmixed, by whatever name they may be called, publicly or privately, without firſt taking out a licence (1) for that purpoſe, within ten days at leaſt before they ſhall retail the ſame, and for which they ſhall pay twenty ſhillings; which licence, if taken out within the bills of mortality, ſhall be under the hands and ſeals of two of the commiſſioners of exciſe, &c. But if taken out without the limits aforeſaid, then ſuch licence ſhall be executed under the hands and ſeals of the ſeveral collectors and ſupervifors of exciſe within their reſpective diſtricts; and a freſh licence ſhall be taken out ten days at the leaſt before the expiration of the twelve months after the taking out of the firſt licence, and in the ſame manner to renew ſuch licence from year to year, on pain of ten pounds, or two months hard labour, until paid, on conviction by one juſtice. And by 24. Geo. 2. c. 40. ſ. 11. and 26. Geo. 2. c. 13. ſ. 8. it ſhall in no caſe be mitigated below five pounds. And by 29. Geo. 2. c. 12. ſ. 22. ſuch perſon ſhall be firſt licenſed to ſell ale or ſpirituous liquors, by two or more juſtices of the peace. For by 2. Geo. 2. c. 28. ſ. 10. juſtices of the peace and other officers ſhall have the ſame juriſdiction over ſuch retailers of ſpirituous liquors as they have over alehouſe-keepers."

Sellers of leſs than two gallons to be deemed retailers. Vide 11. Geo. 2. c. 26. ſ. 1. where clandeſtine ſellers are deemed retailers; and 9. Geo. 2. c. 23. ſ. 16. where giving liquors to ſervants, or apprentices fetching goods from ſhops, is deemed retailing. Vide alſo ſect. 11. reſpecting paying wages in ſpirituous liquors.

† *Sect.* 37. By 17. Geo. 2. c. 17. ſ. 22. "Every perſon who ſhall retail ſpirituous liquors mixed or unmixed, to be drank in any quantity whatſoever, in any place to him belonging, or ſhall retail, or ſend the ſame abroad in leſs than two gallons, ſhall be deemed a retailer."

† *Sect.* 38. And by 17. Geo. 2. c. 17. ſ. 19. "No ſuch licence ſhall be granted, except to ſuch perſons only who keep taverns, victualling-houſes, inns, coffee-houſes, or alehouſes; and all other licences ſhall be void; and if any licenſed perſon ſhall exerciſe the trade of a diſtiller, grocer, or chandler, or keep a brandy ſhop for ſale of ſpirituous liquors, the licence ſhall be void."

To what kind of public-houſe-keepers licences ſhall be only granted.

†. *Sect.* 39. By 24. Geo. 2. c. 40. ſ. 12. and 26. Geo. 2. c. 13. ſ. 9. "No licence ſhall be granted within the limits of the head office of exciſe in London, but to ſuch as

"occupy

" occupy tenements of ten pounds a-year, and pay parish-
" rates for the same, or in places where the occupiers of
" houses are not rated to the church and poor, then to such
" persons as pay rent of twelve pounds a-year, and not
" otherwise, nor to persons in any other part of the king-
" dom but such as pay to the church and poor: and no
" licence shall be of any avail longer than he shall be so
" qualified."

† *Sect.* 40. By 29. Geo. 2. c. 12. s. 26. " Every person
" who shall retail ale, beer, or other liquors, in any prison
" or house of correction, or workhouse, shall be deemed
" keepers of common alehouses and tippling-houses, unless
" they shall obtain a licence according to law."

Prison-keepers selling liquors deemed alehouse-keepers.

† *Sect.* 41. By 29. Geo. 2. c. 29. s. 22. " Neither the
" commissioners of excise, or any of the collectors or super-
" visors, or any other officers appointed to deliver licences
" to the retailers of any spirituous liquors or strong waters,
" shall grant or deliver any such licence to any person who
" shall not produce a licence, granted to him by justices of
" the peace to sell ale, beer, and other exciseable liquors,
" and stamped according to 9. Anne, c. 23."

Sellers of spirituous liquors must have ale licences also.

† *Sect.* 42. By 32. Geo. 3. c. 59. s. 9. " It shall not be
" lawful for any person or persons whatever, in any county,
" riding, city, borough, town-corporate, or place, in
" *Great Britain*, by virtue of any licence or licences granted
" or to be granted by any of the commissioners or officers
" of excise, for the sale of foreign wines, or *British*-made
" wines, or sweets, by retail, to sell the same by retail, to
" be drank in his, her, or their house or houses, or place
" thereto adjoining or belonging, except such person and
" persons only to whom a licence shall have been granted,
" by justices of the peace, or other officers, to sell ale, beer,
" and other liquors, in the same house or houses respec-
" tively; and the several justices of the peace, and all other
" officers, in and throughout the kingdom of *Great Britain*,
" shall be, and are hereby impowered and authorized to
" have and exercise the same jurisdictions, powers, and
" authorities, over such retailers of foreign or *British*-made
" wines or sweets, who shall sell the same to be drank in
" his, her, or their house or houses, or place thereto ad-
" joining or belonging, as aforesaid, as they now have or
" exercise, or are entitled to have or exercise, over persons
" licensed to sell ale, beer, and other liquors, by any statute
" whatsoever; and if any person or persons shall sell or
" cause to be sold by retail as aforesaid, any foreign or
" *British*-made wines or sweets, to be drank in his, her, or

No person to sell wine by retail, to be drawn in his house, without having a beer licence.

Penalty for selling wine by retail, without having a beer licence.

" their houſe or houſes, or place thereto adjoining or " belonging, without having a licence to ſell ale, beer, and " other liquors in the ſame houſe or place, every ſuch perſon " or perſons ſhall ſeverally and reſpectively forfeit and pay " for every ſuch offence the like penalty and penalties as " are inflicted on perſons for ſelling ale, beer, or other " exciſeable liquors, without a licence, by an act made in " the fifth year of the reign of his preſent majeſty, intituled,
5. Geo. 3. c. 46. " *An act for altering the ſtamp duties upon admiſſions into corporations or companies, and for ſecuring and improving the ſtamp duties in* Great Britain, to be adjudged, recovered, " levied, certified, and applied in ſuch and the like manner, " and under the like terms, and with the like powers and " authorities, as the ſeveral penalties inflicted by the ſaid " act are hereby, or by any other act or acts of parliament " relating thereto, directed to be adjudged, recovered, levied, " certified, and applied."

† *Sect.* 43. By 32. Geo. 3. c. 59. ſ. 10. it is further enacted, " That if any perſon or perſons ſhall at any time " be ſued, moleſted, or proſecuted, for any thing by him " or them done or executed in purſuance of this act, or of " any clauſe, matter, or thing herein contained, ſuch per-
General iſſue. " ſon or perſons ſhall or may plead the general iſſue, and " give the ſpecial matter in evidence for his or their defence; " and if upon the trial a verdict ſhall be paſſed for the " defendant or defendants, or the plaintiff or plaintiffs " become nonſuited, then ſuch defendant ſhall have treble
Treble coſts. " coſts awarded to him or them againſt ſuch plaintiff or " plaintiffs."

Not to extend to the Vintners' Company, &c. † *Sect.* 44. " By 32. Geo. 3. c. 59. ſ 11. it is further enacted, " That nothing in this act contained ſhall extend, " or be conſtrued to extend, to any perſon who ſhall be a " maſter, warden, freeman, or one of the commonalty of " the Vintners of the city of *London*; or to any perſon who " ſhall be licenſed by the chancellors or vice-chancellors of " the two univerſities, in that part of *Great Britain* called " *England*, or either of them; or to any perſon who ſhall " keep one of the three ſeveral wine taverns within the " borough of *St. Alban's*, in the county of *Hertford*, licenſed " by the mayor and burgeſs thereof, according to the tenor " of certain letters patent granted by queen *Elizabeth* and
Freemen of the Vintners' Company by redemption, after Oct. 10, 1792, not exempted from this act. " king *James* the Firſt, for and towards the maintenance of " the free-ſchool there: provided nevertheleſs, that no per- " ſon who, from and after the ſaid tenth day of *October* one " thouſand ſeven hundred and ninety-two, ſhall be admitted " to the freedom of the ſaid company of vintners of the city " of *London*, by redemption only, ſhall be exempted from

" the

" the obligation of obtaining a licence to retail ale, beer, and " other liquors, to be granted in manner aforeſaid, but that " the freemen only of the ſaid company, who have been " already admitted to their freedom, or who, from and after " the ſaid tenth day of *October* one thouſand ſeven hundred " and ninety-two, ſhall be admitted to their freedom in " right of patrimony, or apprenticeſhip, ſhall be entitled to " ſuch exemption."

† *Sect.* 45. It hath been determined, that a perſon who ſells ſpirituous liquors by retail without a licence from two juſtices of the peace, is liable to the penalties of 5. Geo. 3. c. 46. though he has a licence from the commiſſioners of the exciſe to retail ſpirituous liquors.

Rex *v.* Downes, 3. Term Rep. 560.

As to the eighth particular, *viz.* How the recognizance ſhall be taken.

† *Sect.* 46. And by 26. Geo. 2. c. 31. ſ. . it is alſo enacted by the ſaid ſtatute, " That upon granting licences " by juſtices of the peace to any perſon to keep an alehouſe, " inn, victualling-houſe, or to ſell ale, beer, and other " liquors by retail, every ſuch perſon ſhall enter into a re- " cognizance to the king in the ſum of ten pounds, with " two ſufficient ſureties each in the ſum of five pounds, or " one ſufficient ſurety in the ſum of ten pounds, under the " uſual condition for maintenance of good order and rule " within the ſame; and in caſe the perſon applying for " ſuch licence ſhall be hindered through ſickneſs or infir- " mity, or any other reaſonable cauſe to be allowed by the " ſaid juſtices, to attend in perſon at the meeting of the " ſame juſtices for granting the ſaid licences, that it ſhall be " lawful for them to grant ſuch licence upon two ſufficient " ſureties entering into ſuch recognizance, each in the " penalty of ten pounds, for performance of the condition " of the ſaid recognizance."

The juſtices on granting licences ſhall take a recognizance.

† *Sect.* 47. And it is further enacted by 26. Geo. 2. c. 31. ſ. 4. " That the ſaid recognizance, with the condition thereof, " fairly written or printed, ſhall forthwith, or at the next " general or quarter-ſeſſions of the peace at fartheſt, after " granting ſuch licences, be ſent or returned to the clerks of " the peace, or perſons acting as ſuch, for every county, " riding, city, liberty, or town-corporate in *England*, wherein " ſuch licences ſhall be granted, under the hands of the juſ- " tices of peace, before whom ſuch recognizances were taken, " to be by the ſaid clerks of the peace, or ſuch other perſon " acting as ſuch, duly entered or filed amongſt the records " of the ſeſſions of the peace; and for every ſuch licence

The clerk of the peace to return the recognizances to the ſeſſions.

" granted without taking ſuch recognizance, and for every " ſuch recognizance taken and not ſent or returned as " aforeſaid, every juſtice of the peace ſigning ſuch licence " ſhall forfeit three pounds ſix ſhillings and eight-pence; " and by ſect. 6. the forfeiture for granting licences without " taking recognizances ſhall be together with coſts to him " who ſhall ſue."

Of which they ſhall deliver an account to the juſtices at their yearly meetings.

† *Sect.* 48. By 26. Geo. 2. c. 31. ſ. 5. " The clerks of " the peace ſhall keep a regiſter or calendar of all the recog- " nizances ſo ſent or returned, and ſhall deliver to the " juſtices at their general meetings in *September*, every year, " for granting licences in each diviſion, or place, a true " copy of ſuch regiſter or calendar; and that for every " recognizance there ſhall be paid to the juſtices clerk, " taking ſuch recognizances, to the clerk of the peace, as a " fee for recording, and for making and delivering copies as " aforeſaid, one ſhilling, and no more, by the perſon " licenſed, over and above the fees payable to the ſaid juſ- " tices clerks."

As to the ninth particular, *viz.* The forfeiture of the recognizance.

The juſtices may ſuppreſs by order, without either information or conviction, or ſhewing cauſe. For conviction is only neceſſary where the penalty is proceeded for, which ought to be by *ſcire facias*. Ld. Ray. 1303. 1405. Vide Strange 631. contra.

† *Sect.* 49. By 5. and 6. Edw. 6. c. 25. ſ. 3. " The juſ- " tices of peace of every ſhire, city, borough, &c. may at " their quarter-ſeſſions by preſentment, information, or " otherwiſe by their diſcretion, inquire of all ſuch perſons " as ſhall be allowed to keep any alehouſe or tippling-houſe, " and that be bound by recognizance as is aboveſaid, if " any of them have done any act whereby they have for- " feited the ſame recognizance: and the ſaid juſtices ſhall " upon every ſuch preſentment or information, award " proceſs againſt every ſuch perſon ſo preſented or com- " plained upon before them, to ſhew why he ſhould not " forfeit his recognizance, and may alſo hear and determine " the ſame by all ſuch ways and means as by their diſcretion " ſhall be thought good."

Juſtices may take away licences, unleſs cauſe be ſhewn that the conditions of the recognizance have been fulfilled.

† *Sect.* 50. By 26. Geo. 2. c. 31. ſ. 7. " Any juſtice of " the peace of any county, riding, city, liberty, or town- " corporate, wherein ſuch licence ſhall be granted, upon " complaint or information that ſuch licenſed perſon hath " done or committed any act, offence, or miſdemeanor, " whereby in the judgment of the ſame juſtice ſuch recog- " nizance may be forfeited, or the condition thereof broken,

" may

" may by ſummons (2) under his hand and ſeal require " ſuch perſon ſo complained of or informed againſt to " appear at the next general or quarter ſeſſions of the peace " for the ſaid county, riding, city, liberty, or town-cor- " porate, then and there to anſwer to the matter of ſuch " complaint or information; and alſo may bind the perſon " or perſons who ſhall make ſuch complaint or information, " or any other perſon or perſons, in a recognizance to " appear at ſuch general or quarter ſeſſion, and give evi- " dence againſt ſuch perſon ſo complained of or informed " againſt; and the juſtices of the peace, in their general or " quarter ſeſſions, ſhall have power to direct the jury which " ſhall attend at ſuch ſeſſions for the trial of traverſes or " ſome other jury of twelve honeſt and ſubſtantial men, to " be then and there impanelled by the ſheriff, without fee " or reward, to inquire of the miſdemeanor charged in the " ſaid complaint or information; and if ſuch jury ſhall " find that the perſon ſo complained of or informed againſt " hath done any act whereby the condition of his recogni- " zance is broken, ſuch act being ſpecified in ſuch complaint " or information, it ſhall be lawful for the court of ſeſſion " to adjudge ſuch perſon guilty of the breach of ſuch recog- " nizance, which verdict and adjudication ſhall be final to " all intents and purpoſes, and thereupon the ſaid juſtices " ſhall order the recognizance entered into by ſuch offen- " der to be eſtreated into the court of exchequer, to be " levied for his majeſty's uſe, and that the ſaid perſon, the " condition of whoſe recognizance ſhall be ſo adjudged to " be broken and forfeited, ſhall, from and after ſuch adjudi- " cation, be utterly diſabled to ſell any ale, beer, cyder, " perry, ſpirituous liquors, or ſtrong waters, for the ſpace " of three years, and any licence granted to ſuch perſon " during ſuch term, ſhall be void and of none effect. But " the juſtices may adjourn the hearing and trial to the then " next general or quarter ſeſſions, where the ſame ſhall be " finally determined."

(2) If the juſtice convicts without a ſummons, he is liable to an information for the miſdemeanor. Strange 678. Ld.Ray.1407. Seſſ. Caſes 353. Ld.Ray.1303. Ld.Ray.1405.

† *Sect.* 51. By 26. Geo. 2. c. 31. ſ. 11. " If any perſon " ſhall be diſabled by conviction to ſell ale, beer, cyder, or " perry, he ſhall by the ſame conviction be diſabled to ſell " any ſpirituous liquors, any licence before obtained for that " purpoſe notwithſtanding, and every licence granted to " him for ſelling ale, beer, cyder, perry, or ſpirituous " liquors ſhall be void, and if he ſhall ſell during ſuch diſ- " ability he ſhall be puniſhed, or for ſelling without licence, " and a certificate from the clerk of the peace (which he " ſhall grant without fee) of ſuch conviction ſhall be legal " evidence."

As

As to the tenth particular, *viz.* Of ſuppreſſing an unlicenſed houſe.

Before this ſtatute it was lawful for any one to keep an alehouſe without licence, for it was a means of livelihood which any one was free to follow. But if it was diſorderly kept, it was indictable as a nuſance. Salk. 45.

† *Sect.* 52. By 5. and 6. Edw. 6. c. 25. "The juſtices of peace within every ſhire, city, borough, town-corporate, franchiſe, or liberty within this realm, or two of them at the leaſt, whereof one to be of the *quorum*, ſhall have full power and authority within every ſhire, city, &c. to remove, diſcharge, and put away common ſelling of ale and beer in common alehouſes and tippling-houſes."

Dalton c. 7. Hutt. 100. Sum. 147. Ld. Ray. 1303. 1405.

† *Sect.* 53. And it ſeems to have been the general opinion in the conſtruction of this clauſe, that an alehouſe-keeper ſuppreſſed in purſuance of it, cannot be afterwards licenſed again but in open ſeſſions.

† *Sect.* 54. By 5. and 6. Edw. 6. c. 25. ſ. 4. "If any perſon, other than ſuch as ſhall be allowed by the ſaid juſtices, ſhall obſtinately, and upon his own authority, take upon him to keep a common alehouſe or tippling-houſe, or ſhall, contrary to the commandment of the ſaid juſtices, or two of them, uſe commonly ſelling of ale and beer, except in fairs, that then the ſaid juſtices, or two of them, whereof one to be of the *quorum*, ſhall for every ſuch offence commit every ſuch perſon ſo offending to the common gaol within the ſaid ſhire, city, borough, &c. there to remain without bail or mainprize by the ſpace of three days; and before his deliverance the ſaid juſtices ſhall take his recognizance with two ſureties, that he ſhall not keep any common alehouſe, tippling-houſe, or uſe commonly ſelling of ale or beer, as by the diſcretion of the ſaid juſtices ſhall ſeem convenient."

The exciſeman's book to be proof of a perſon being an alehouſe-keeper.

† *Sect.* 55. By 26. Geo. 2. c. 31. ſ. 9. "Where any juſtice of the peace ſhall ſuſpect that any alehouſe-keeper, victualler, or retailer, ſells ale, beer, cyder, or perry, without ſuch licence, it ſhall and may be lawful for ſuch juſtice to call ſuch ſuſpected perſon before him, and alſo any exciſe-officer or gauger to produce before ſuch juſtice his ſtock-book, or other account which ſuch officer keeps, of the charge or ſurvey of ſuch ſuſpected perſon in reſpect of any of the liquors aforeſaid; and likewiſe to examine ſuch exciſe-officer or gauger upon oath touching the manner in which ſuch officer ſurveys or charges ſuch ſuſpected perſon in reſpect of any liquors aforeſaid, or how or in what manner ſuch ſuſpected perſon actually pays the duties for any of the ſaid liquors; and if it ſhall appear

" appear by ſuch ſtock-book or other account, or by the " examination of the ſaid officer or gauger, that ſuch per- " ſon ſo ſuſpected of ſelling any of the liquors aforeſaid, " is ſurveyed as a victualler or retailer, and is charged with " the ſame duties that victuallers and retailers are uſually " charged with, and pay for any of the liquors aforeſaid, " and is not intitled to the allowance or abatement given " to common brewers, then, and in ſuch caſe ſuch ſuſ- " pected perſon ſhall be deemed an alehouſe-keeper, vic- " tualler, retailer, or ſeller of any of the liquors aforeſaid, " to all intents and purpoſes, as if the ſame had been proved " by two witneſſes."

† *Sect.* 56. By 26. Geo. 2. c. 31. ſ. 10. " If any per- " ſon ſhall make information before any one juſtice, and " ſhew probable cauſe that he ſuſpects that any perſon ſells " ale, beer, or other liquors without a licence from two " juſtices, it ſhall be lawful for ſuch juſtice to call ſuch " ſuſpected perſon before him, and alſo to ſummon any " other perſon as evidence, to prove the charge againſt ſuch " ſuſpected perſon; and if ſuch perſon ſo ſummoned ſhall " refuſe to appear, or when appearing ſhall refuſe to be ex- " amined upon oath, and give evidence as aforeſaid, ſuch " perſon or perſons ſhall forfeit the ſum of ten pounds, to " be levied by diſtreſs, &c. for the uſe of the poor where " the offender ſhall live." Juſtices may examine perſons ſuſpected not to be licenſed.

† *Sect.* 57. It ſeems that the juſtice may ſuppreſs an unlicenſed houſe at diſcretion, for no appeal lies on the denial of a licence; and on a commitment of the crime the want of a licence can only come in queſtion, and not the reaſon why it was denied. Salk. 46. Stra. 631. Ld.Ray. 1303. 1405.

† *Sect.* 58. It is ſaid, that a licenſed houſe can only be ſuppreſſed by proceeding on a breach of the recognizance, or by indictment for ſuffering ſuch diſorder as renders the houſe a nuſance. Salk. 45. 471.

† *Sect.* 59. It is alſo ſaid, that when a houſe is ſuppreſſed as a nuſance, a new licence may be granted to another man. Hutt. 100.

As to the eleventh particular, *viz.* Of the penalties for ſelling ale, beer, or ſpirituous liquors without licence.

Sect. 60. By 3. Car. 1. c. 3. " If any perſon ſhall " upon his own authority, not being thereunto law- " fully licenſed, take upon him to keep a common ale- " houſe or tippling-houſe, or uſe commonly ſelling of ale " or beer, cyder or perry, except in fairs, every ſuch per- " ſon 8. Mod. 175. Strange 555. Seſſ. Caſ. 264.

" ſon ſhall for every ſuch offence forfeit twenty ſhillings " to the uſe of the poor of the pariſh where ſuch offence " ſhall be committed; the ſame offence being viewed by " any mayor, bailiff, or juſtice of peace, or other head " officer within the ſeveral limits, or confeſſed by the par- " ty ſo offending, or proved by the oath of two witneſſes, " to be taken before any mayor, bailiff, or other head of- " ficer, or any juſtice of peace, being within the limits of " their commiſſion." (3)

(3) The remainder of this ſection, which was recited in the former edition, preſcribed the form in which the penalty ſhould be levied; but as this part ſeems to be virtually repealed by 5. Geo. 3. c. 46. which preſcribes the amount and the manner of levying the penalties for this offence, I have omitted to inſert it. Vide infra.

Forfeiture for ſelling in an unlicenſed houſe.

† *Sect.* 61. And by 4. Jac. 1. c. 4. " If any perſon ſhall " ſell or deliver any beer or ale to any perſon that ſhall " then ſell beer or ale as a common tippler, or alehouſe- " keeper, the ſame perſon not having a licence to ſell ale " or beer (except it be for the uſe of his houſehold only), " he ſhall forfeit for every barrel 6s. 8d. and ſo proportion- " ally for other quantities, half to the poor, and half to " him that ſhall ſue in ſeſſions by action of debt, informa- " tion, indictment, or preſentment."

Puniſhment on perſons ſelling diſtilled liquors without licence.

† *Sect.* 62. And by 24. Geo. 2. c. 40. ſ. 13. and 9. Geo. 3. c. 6. " All the diſtilled liquors that ſhall be " then, or at any time within ſix months after conviction " of ſuch unlicenſed perſon, found in the cuſtody, houſe, " or other place occupied therewith, whether it be in his " own occupation or not, ſhall, by warrant of the ſaid " commiſſioners, or of one juſtice, be ſeized and ſtaved, or " otherwiſe deſtroyed. And if any perſon ſhall offend again " in like manner, the commiſſioners or juſtices before " whom he ſhall be convicted of ſuch ſubſequent offences, " may inflict the penalties by any former law to be inflicted " for ſuch offence, and alſo commit the offender to the " houſe of correction, not exceeding three months."

The penalty of retailing diſtilled liquors without a licence, increaſed.

† *Sect.* 63. And whereas the aforeſaid penalty of ten pounds is ſometimes inſufficient to deter offenders, it is therefore enacted by 13 Geo. 3. c. 56. " That whoever, for " himſelf, or by any other perſon for his benefit, ſhall pre- " ſume to retail any diſtilled ſpirituous liquors, or ſtrong " waters, without firſt taking out a licence for that purpoſe, " in the manner before preſcribed and directed, ſhall forfeit " fifty pounds for each offence, to be ſued for, levied, reco- " vered, and mitigated by any law of exciſe now in force, or " by action of debt or information at Weſtminſter, half to " the king, half to the proſecutor: but this penalty ſhall " not

" not either by the commiſſioners or juſtices be reduced be-
" low five pounds."

† *Sect.* 64. But by 29. Geo. 2. c. 12. ſ. 32. " If any " perſons ſo licenſed to ſell ale, beer, or other exciſeable " liquors, ſhall die or remove from the alehouſe, or other " place wherein ſuch ale, beer, or other liquors, ſhall, by " virtue of ſuch licence, be ſold, it ſhall and may be law- " ful for the executors, adminiſtrators, and aſſigns of ſuch " perſon ſo dying or removing, who ſhall be poſſeſſed of " ſuch houſe or place, or the occupier thereof, to ſell ale, " beer, or other liquors therein, during the reſidue of the " term for which ſuch licence ſhall have been granted to " the perſon ſo dying or removing, without any certificate " from any juſtice of the peace, or any new licence to " be had and obtained in that behalf, any thing in 26. " Geo. 2. or any other law to the contrary notwith- " ſtanding."

The repreſentatives of a publican may uſe the unexpired term of the licence, without the certificate required by 26. Geo. 2. c. 31. Vide ante page 273.

† *Sect.* 65. By 5. Geo. 3. c. 46. ſ. 22. it is recited, that by the laws now in force, perſons ſelling ale or beer, or other exciſeable liquors by retail, without licence, are liable and ſubject by different laws to different penalties and puniſhments, which has occaſioned much confuſion, and an ill and improper uſe has been made thereof in many inſtances: and for the prevention thereof it is enacted, " That every perſon " lawfully convicted of ſelling ale or beer, or other exciſe- " able liquors by retail, without being duly licenſed ſo to " do, ſhall, for every ſuch offence, forfeit and undergo " the ſeveral penalties and puniſhments herein-after men- " tioned, and provided in that behalf, inſtead and in lieu " of the ſeveral pecuniary and corporal puniſhments which " they are now liable or ſubject to by any law now in " force; that is to ſay, for the firſt offence the ſum of " forty ſhillings, and alſo the coſts and expence of con- " victing ſuch offender; and in caſe ſuch ſum, together " with the charges and expences of convicting ſuch of- " fender, ſhall not be paid within the ſpace of fourteen " days next after ſuch conviction, that then the offender " ſhall ſuffer impriſonment for one month, unleſs the ſaid " penalty, and the coſts, charges, and expences of ſuch con- " viction ſhall be ſooner paid; for the ſecond offence four " pounds, &c. and, if not paid within a week, two months " impriſonment; and for the third, and every other of- " fence, the ſum of ſix pounds, &c. and, if not paid in " three days, three months impriſonment. All which ſaid " coſts and expences ſhall be aſſeſſed, ſettled, and aſcer- " tained by the juſtice or juſtices of the peace before whom " ſuch offenders ſhall reſpectively be convicted; and all " the

All the former penalties upon perſons ſelling liquors without licence for that purpoſe, made uniform.

" the penalties, forfeitures, &c. ſhall go, half to the king, " and the other half to the informer, together with all ſuch " coſts, charges, and expences, to be aſſeſſed or aſcertained " as aforeſaid."

Juſtices may hear and determine the offence.

† *Sect.* 66. And by 5. Geo. 3. c. 46. ſ. 23. " It ſhall be " lawful for any one or more juſtice or juſtices of the peace " of the county or place to hear and determine the ſame " offences in a ſummary way; which ſaid juſtice or juſtices " of the peace are hereby authoriſed and required, upon " any information exhibited, or complaint made in that " behalf, to or before him or them, to ſummon the party " or parties accuſed, and alſo the witneſſes on either ſide " (if they ſhall be required to ſummon any ſuch witneſſes), " and upon the appearance or contempt of the party or " parties accuſed, by not appearing, to proceed to examine " and hear the matter in a ſummary way; and alſo to ex- " amine ſuch witneſſes on oath as ſhall be produced therein, " and to give his or their judgment thereon; and in caſe " he or they ſhall convict the party or parties ſo accuſed, " or complained againſt, of the offence laid to his, her, or " their charge, and ſuch party or parties ſhall refuſe or neg- " lect to pay the penalty or penalties, for which he, ſhe, " or they ſtand convicted, within the time herein-before " mentioned for that purpoſe, together with the coſts of " ſuch conviction or convictions, to be aſſeſſed, ſettled, " and aſcertained as aforeſaid; that then it ſhall be lawful " for every ſuch juſtice and juſtices to iſſue a warrant under " their hands and ſeals, for the apprehending and com- " mitting to priſon any ſuch offender, for ſuch time and in " ſuch manner, as the nature of the offence ſhall require, " according to the true intent and meaning of this act."

N. B. The number of witneſſes neceſſary toward the conviction is not here mentioned, and therefore this ſeemeth to reſt as it was before, on the ſtatute of 3. Car. 1. c. 3. which directs the conviction to be on confeſſion of the offender, or oath of two witneſſes. 1. Burn, 24.

Penalty on witneſſes not obeying ſummons.

† *Sect.* 67. By 5. Geo. 3. c. 46. ſ. 24. " Whoever " ſhall be ſummoned as a witneſs before ſuch juſtice touch- " ing the matters aforeſaid, either on the part of the pro- " ſecution, or the party accuſed, and ſhall neglect or re- " fuſe to appear at the time and place to be for that purpoſe " appointed, without a reaſonable excuſe to be allowed of " by ſuch juſtice; or appearing ſhall refuſe to be examined " on oath and give evidence before ſuch juſtice, ſhall forfeit " twenty ſhillings, to be levied and paid in ſuch manner " and by ſuch means as are herein-before directed as to " other penalties."

N. B. This penalty is but ſmall, and might defeat the intention of the act; for by the witneſs paying 20s. the offender may chance to eſcape the payment of 2, 4, or 6 l. beſides charges. But there is a clauſe in the ſtatute of 26. Geo. 2. c. 31. which impoſes on the like offence a penalty of 10 l. 1. Burn, 24.

† *Sect.*

† *Sect.* 68. By 5. Geo. 3. c. 46. f. 25. "Perſons aggrieved by the conviction or judgment of any juſtice or "juſtices of the peace, for any of the offences aforeſaid, "and ſhall give ſecurity to the ſatisfaction of ſuch juſtice, "&c. for payment of penalty, coſts, and expences, to be "expreſſed in the warrant of diſtreſs on ſuch conviction, "may appeal to the next quarter-ſeſſions, unleſs the ſame "be held within ſix days or leſs next after ſuch conviction; "and in that caſe to the juſtices aſſembled at the next ſeſ- "ſions after ſuch ſeſſions, and not afterwards; and the "judgment of ſuch ſeſſions ſhall be final and concluſive. "And if ſuch appeal be frivolous and vexatious, the party "grieved by the ſame ſhall have coſts, &c. not exceeding "five pounds."

How perſons aggrieved may appeal.

N. B. There ſeems to be a miſtake in ſetting forth that the coſts ſhall be expreſſed in the warrant of diſtreſs; for no power of diſtreſs is given: the meaning ſeems to have been, that the

ſame ſhall be expreſſed in the conviction, as ſpecified in the form preſcribed by the act. 1. Burn, 25. But by 9. Geo. 3. c. 6. this act ſhall not extend to alter any acts made ſince the 8. Geo. 2. c. 18. relating to the ſelling of ſpirituous liquors by retail without licence.

As to the twelfth particular, *viz.* Of extortion in public-houſes.

Sect. 69. By 12. Edw. 2. c. 6. "No officer in city or "in borough, that by reaſon of his office ought to keep "aſſizes of wines and victuals, ſo long as he is attendant to "that office, ſhall not merchandize for wines nor victuals, "neither in groſs nor by retail; and if any be convict of "ſuch offence, the merchandize ſhall be forfeited to the "king, and the third part thereof delivered to the party "that ſued for the ſame, &c."

† *Sect.* 70. By 3. Hen. 8. c. 8. "As often as any vic- "tualler choſen to bear any office within any city, borough, "or town-corporate, which for the time that he ſhall "ſtand and be in ſuch office ſhould have the aſſeſſing and "correction for ſelling of victuals, that then two diſcreet "and honeſt perſons of the ſame city, borough, or town- "corporate, not being victuallers, nor any of them being "a victualler, ſhall be choſen by the commonalty of the "ſame city, borough, or town-corporate, in like form as "the ſaid officer ſhall be choſen; which two perſons, with "the ſaid officer, ſhall be ſworn truly to ſeſs and ſet the "prices and aſſizes of victual there, for the time that any "ſuch victualler ſhall abide in the ſame office: and that "then it ſhall be lawful to all and every of the ſaid officers, "after the ſame victuals be ſet and ſeſſed by the ſame officer, "and the ſaid two perſons, or one of the ſame two perſons, "the other being abſent, to merchant and ſell wines, and "all other victual in groſs, and at retail, during the time

"that

" that he ſhall be in any ſuch office, without any thing " therefore to forfeit; the ſaid ſtatute, act, and ordinance " of 12. Edw. 2. or any other act or acts, ordinance, or " ſtatute to the contrary made in any wiſe notwith- " ſtanding."

Vide C. Jac. 609, 610. 2. Roll. 225, 226.

† *Sect.* 71. By 21. Jac. 1. c. 21. " All hoſtlers or inn- " holders ſhall ſell their horſe-bread, hay, oats, beans, " peaſe, provender, and all kind of victual, both for " man and beaſt, for reaſonable gain, having reſpect to " the prices for which they ſhall be ſold in the markets ad- " joining, without taking any thing for litter."

Carthew 150. Skinner 291. Raymond 162. Roll. Ab. 95. 9. Hen. 6. 53.

" And every hoſtler and innkeeper in any town or vil- " lage, being a thoroughfare, and no city, town-corporate, " or market-town, wherein any common baker, having " been an apprentice to the trade for ſeven years, is dwell- " ing, may make within his houſe horſe-bread ſufficient, " lawful, and of due aſſize, according to the price of grain " or corn; any thing in the ſaid ſtatute contained to the " contrary notwithſtanding."

" And if the horſe-bread, which any of the ſaid hoſt- " lers or innholders ſhall make, be not ſufficient, lawful, " and of due aſſize, according to the price of grain and corn, " as aboveſaid; or that if any of them ſhall offend in any " thing contrary to this act; the juſtices of aſſize, juſtices of " *oyer* and *terminer*, juſtices of the peace in every ſhire, li- " berty, or franchiſe within this realm, ſheriffs in their " turns, and ſtewards in their leets, may inquire, hear, and " determine the ſaid offences of the ſaid hoſtlers and inn- " holders, who ſhall be fined for the firſt offence ac- " cording to the quantity of the offence, and for the ſe- " cond offence ſhall be impriſoned for one month, and for " the third ſhall ſtand upon the pillory, &c."

As to the thirteenth particular, *viz.* Of publicans ſuffering tippling and drunkenneſs.

Salkeld 45.

Publicans are not to encourage tippling in their houſes.

Sect. 72. By 1. Jac. 1. c. 9. and 4. Jac. 1. c. 15. and 21. Jac. 1. c. 7. and 1. Car. 1. c. 4. " If any inn-keeper, vic- " tualler, or alehouſe-keeper, or any keeper of a tavern, or " one who ſells wine in his houſe, and alſo keeps an inn, or " victualling in his houſe, do permit or ſuffer any perſon, " whether ſuch perſon be an inhabitant of the place where " ſuch inn, &c. ſhall be, or not, to continue drinking or " tippling in any inn or victualling-houſe, &c. other than " ſuch as ſhall be invited by any traveller, and ſhall accom- " pany him only during his neceſſary abode there; and " other

" other than labouring and handicraftsmen in cities, and " towns corporate, and market towns upon the uſual work- " ing days, for one hour at dinner time, to take their diet " in an alehouſe; and other than labourers and workmen, " who for the following of their work by the day, or by the " great, in any city, town corporate, market town, or vil- " lage, ſhall for the time of their ſaid continuing in work " there, ſojourn, lodge, or victual in any inn, alehouſe, or " other victualling-houſe; or other than for urgent and " neceſſary occaſions, to be allowed by two juſtices of peace, " that then every ſuch inn-keeper, &c. ſhall forfeit ten ſhil- " lings to the uſe of the poor of the pariſh where ſuch of- " fence ſhall be committed; the ſame offence being viewed " and ſeen by any mayor, bailiff, or juſtice of the peace " within their ſeveral limits, or found by verdict on a trial 4. Jac. 1. 5. " upon an indictment at aſſizes, ſeſſions, or court leet, or " proved by the oath of (*a*) one witneſs to be taken before (*a*) 21. Jac. 1. " any mayor or bailiff, &c. or any one juſtice of the peace, 7. " or by the voluntary confeſſion of any offender, after which " confeſſion the oath of ſuch offender ſhall be taken, and be " a ſufficient proof againſt any other offending at the ſame " time."

Sect. 73. And by 1. Jac. 1. c. 9. ſ. 3. " The ſaid penalty " of ten ſhillings ſhall be levied by the conſtables or church- " wardens of the pariſhes where the offence ſhall be commit- " ted, by way of diſtreſs, and for default of ſatisfaction " within ſix days, the ſame to be preſently appraiſed and " ſold, and the ſurpluſage to be delivered to the party of " whom the diſtreſs was taken, and for want of ſufficient " diſtreſs the party offending to be by the ſaid mayor, &c. " committed to the common gaol, there to remain till the " ſaid penalty be paid. And if the ſaid conſtables or church- " wardens do neglect their duty in levying the ſaid penalties, " or in default of diſtreſs do neglect to certify the ſame within " twenty days to the ſaid mayor, &c. every perſon ſo of- " fending ſhall forfeit forty ſhillings to the uſe of the poor " of the pariſh where ſuch offence ſhall be committed, to be " levied by diſtreſs of goods, by warrant from any one juſ- " tice of peace, &c. to be taken and detained ſix days; " within which, if payment be not made, the ſame goods " to be appraiſed and ſold, &c." How the penalty for ſo doing is to be levied.

Sect. 74. But by 1. Jac. 1. c. 9. " The puniſhment of " ſuch as ſhall offend againſt the ſame within either of the " two univerſities, or the precincts or liberties of the ſame, " ſhall be done upon the offenders, and juſtice miniſtered " in this behalf, according to the intent of the ſaid law, by " the governors, magiſtrates, juſtices of the peace, or other How this offence may be puniſhed in the univerſities.

" principal officers of either of the ſaid univerſities, to whom " in other caſes the adminiſtration of juſtice, and correc- " tion and puniſhment of offenders by the laws of this realm " and their ſeveral charters doth belong; and that no other " within their liberties, for any matter concerning the ſaid " law contrary to their ſeveral charters, do intermeddle, and " that all penalties to be forfeited by virtue of the ſaid act, " within either of the univerſities or the liberties or pre- " cincts of the ſame, ſhall be levied by the officers or mi- " niſters of either of the ſaid univerſities, to be from time " to time in that behalf appointed by the vice-chancellors " thereof for the time being reſpectively; and that all powers " and authorities given by the ſaid act, ſhall by the gover- " nors, magiſtrates, and principal officers aboveſaid, of " either of the ſaid univerſities, be duly executed within " either of the ſaid univerſities, &c."

The puniſhment of drunkards.

(*a*) 4. Jac. 1. c. 5. par. 11.

(*b*) 21. Jac. 1. 7.

4. Jac. 1. 5.

Sect. 75. By 4. Jac. 1. c. 5. and 21. Jac. 1. c. 7. " Whoever ſhall be drunk, and within (*a*) ſix months after " ſuch offence ſhall be convict thereof, either on an indict- " ment at aſſizes or ſeſſions, or court leet, or before any (*b*) " juſtices of peace in any county, or any juſtice of peace, " or other head officer in any city or town-corporate, upon " view, or confeſſion, or by oath of one witneſs, ſhall forfeit " five ſhillings, to be paid within one week after conviction " to the church-wardens of the pariſh where the offence " ſhall be committed, &c.: and if ſuch perſon ſhall refuſe or " neglect to pay the ſaid forfeiture, the ſame ſhall be levied " of his goods by warrant or precept from the ſaid court, " or judge before whom the ſame conviction ſhall be: and " if the offender be not able to pay the ſaid ſum of five ſhil- " lings, he ſhall be committed to the ſtocks for every of- " fence, there to remain ſix hours; and if he ſhall be con- " victed a ſecond time of the like offence, he ſhall be bound

(*c*) Par. 6.

" to the (*c*) good behaviour, with two ſureties in a recog- " nizance of ten pounds. And if any conſtable or other " inferior officer of the place where the offence ſhall be com- " mitted, &c. do neglect the due correction of the ſaid of- " fender, or the due levying of the ſaid penalties, he ſhall " forfeit ten ſhillings to the uſe of the poor, &c. to be levied " by way of diſtreſs, by warrant from any mayor, &c."

The puniſhment of repeated tippling.

(*d*) 1. Ca. 1. 4.

(*e*) 21. Jac. 1. 7.

Supra ſect. 17.

Sect. 76. By 4. Jac. 1. c. 5. and 21. Jac. 1. c. 7. and 1. Car. 1. c. 4. " If any perſon ſhall remain or continue " drinking or tippling in any inn, victualling-houſe, ale- " houſe or (*d*) tavern, &c. whether he be an (*e*) inhabitant " of the place at the time of ſuch drinking or not; and the " ſame be viewed by any mayor, or other head officer or " juſtice of peace, or confeſſed by the offender, or proved

" by

" by one witneſs in the manner preſcribed for the above-
" mentioned offence of ſuffering tippling in public houſes, 4. Jac. 1. 5.
" unleſs it be in ſuch caſes as are excepted in the above par. 11.
" mentioned act. relating to the ſaid offence of ſuffering tip-
" pling, &c. every perſon ſo offending, and being con- Supra ſect. 20.
" victed within ſix months, ſhall forfeit three ſhillings and
" four-pence to the uſe of the poor of the pariſh where the
" offence ſhall be committed, to be levied by way of diſtreſs
" in ſuch manner as the abovementioned forfeitures for
" drunkenneſs are to be levied: and if any ſuch offender be
" not able to pay the ſaid forfeiture, any mayor, head-of-
" ficer, juſtice of peace, or court where any ſuch conviction
" ſhall be, may ſet him in the ſtocks for four hours."

Sect. 77. And by 4. Jac. 1. c. 5. ſ. 7. " All conſtables, Officers to be charged on
" church-wardens, headboroughs, tithingmen, aleconners oath to pre-
" and ſidemen ſhall in their ſeveral oaths incident to their ſent ſuch of-
" ſeveral offices, be charged in like ſort to preſent the of- fences.
" fences contrary to the ſaid ſtatute."

Sect. 78. But by 4. Jac. 1. c. 5. ſ. 8. it is provided, " That Eccleſiaſtical
" nothing therein contained ſhall in any wiſe abridge the juriſdiction.
" eccleſiaſtical juriſdiction." And it is further provided, Only one pu-
ſ. 9. " That no offender, who hath once been puniſhed for niſhment.
" his offence againſt any article of the ſaid act, by any the
" ways or means before limited, ſhall be eftſoons puniſhed
" for the ſame offence by any other ways or means."

Sect. 79. By 4. Jac. 1. c. 5. ſ. 10. " Nothing in the ſaid Not to preju-
" act contained ſhall be prejudicial to either of the univer- dice the rights
" ſities, but that the chancellor, maſters, and ſcholars, &c. of the uni-
" may as fully uſe and enjoy all their juriſdictions, rights, verſities.
" privileges, and charters, as before the ſaid ſtatute they
" had or might have done; any thing in the ſaid act to the
" contrary notwithſtanding."

Sect. 80. By 7. Jac. 1. c. 10. " If any perſon being an Additional
" alehouſe-keeper, ſhall be lawfully convicted for any of- punihment.
" fence committed againſt any of the branches of either of
" the ſaid acts of 1. Jac. 1. c. 9. or 4. Jac. 1. c. 5. he ſhall Vide L. Ray-
" for the ſpace of three years next enſuing the ſaid convic- mond 1303.
" tion, be utterly diſabled to keep any ſuch alehouſe." 1405.

† *Sect.* 81. By 30. Geo. 2. c. 24. ſ. 14. " If any perſon or Publicans not
" perſons licenſed to ſell any ſorts of liquors, or who ſhall to ſuffer
" ſell or ſuffer the ſame to be ſold in his, her, or their gambling by
" houſe or houſes, or in any out-houſes, ground, or apart- ſervants in
" ments thereto belonging, ſhall knowingly ſuffer any gam- their houſes
" ing with cards, dice, draughts, ſhuffle-board, Miſſiſſippi, on penalty of
101.

" or billiard-tables, ſkettles, ninepins, or with any other " implement of gaming by any journeymen, labourers, ſer- " vants or apprentices; on conviction by confeſſion, or on " the oath of one witneſs, before any juſtice of the county " or place within ſix days after the offence committed, he " ſhall forfeit forty ſhillings, and for every like offence af- " terwards ten pounds, to be levied by warrant of diſtreſs, " and three fourths thereof paid to the poor, and the other " fourth to the party on whoſe information the offender " ſhall be convicted."

And the parties who ſo game are liable to pay from 5 to 20s.

Sect. 82. And it is further enacted, " That if any ſuch " perſons ſhall ſo game as aforeſaid, and complaint thereof " ſhall be made on oath to a juſtice of the place, he may iſ- " ſue his warrant to a conſtable to apprehend and carry ſuch " offender before a juſtice of the county, and on conviction " as aforeſaid, he ſhall forfeit from five to twenty ſhillings, " or be committed to hard labour."

CHAP-

CHAPTER THE SEVENTY-NINTH.

Of MONOPOLIES.

A MONOPOLY is an allowance by the king to a particular perſon or perſons of the ſole buying, ſelling, making, working, or uſing of any thing, whereby the ſubject in general is reſtrained from the freedom of manufacturing or trading which he had before. Monopoly differs from *ingroſſing* only in this, that monopoly is by patent from the king, and ingroſſing by the act of the ſubject between party and party.

But for the better underſtanding of this ſubject, I ſhall conſider,

1. In what caſes Monopolies are illegal.

2. How Monopolies may be eſtabliſhed or ſuppreſſed.

3. In what caſes the king may grant LETTERS PATENT.

4. How far AUTHORS and BOOKSELLERS have an excluſive *copy-right* in literary works.

5. How far ENGRAVERS have an excluſive right in engravings.

6. How far CALLICO PRINTERS have an excluſive right in their patterns.

As to THE FIRST POINT, *viz.* In what caſes Monopolies are illegal.

Sect. 1. It is ſaid, that all grants of this kind relating to any known trade are made void by the common law, as being againſt the freedom of trade, and diſcouraging labour and induſtry, and reſtraining perſons from getting an honeſt livelihood by a lawful employment, and putting it in the power of particular perſons to ſet what prices they pleaſe on a commodity; all which are manifeſt inconveniences to the publick (1).

3. Mod. 132. 127. 76. 11. Co. 87. 1. Roll. 4. 2. Roll. 174. Godb. 254. 2. Inſt. 63. 47. 10. Mod. 131. See Skinner 132 to 137. 165 to 173. 197 to 204. 223 to 226. East India Com. *v.* Sandys.

(1) The king, and none but the king, Skinner 224. by his charter, may conſtitute fraternities for the management of foreign and domeſtic trade, 8. Co. 125. who may make by-laws in reſtraint, if they be for the regulation of trade. See Com. Dig. By-law, b. 3. c. 3. Trade B. D. 1. D. 4. 10. Mod. 139.

(a) 2. R. Ab. 214. 3. Inſt. 182. 2. Inſt. 61.

Sect. 2. And upon this ground it hath been (*a*) reſolved, that the king's grant to any particular corporation of the ſole importation of any merchandize is void, whether ſuch merchandize be prohibited by ſtatute or not (2).

(2) Hence alſo it ſeems, that the king's charter, empowering particular perſons to trade to and from ſuch a place is void, ſo far as it gives ſuch perſons an excluſive right of trading and debarring all others: and it ſeems now agreed, that nothing can exclude a ſubject from trade but an act of parliament, Ray. 489. Chan. Ca. 165. Vernon 127. Skinner 165. 3. Mod. 126. 3. Bacon 627. c. 3. Trade 4.

(b) 2. R. Abr. 214. (c) 1. Jones 231. 2. R. Abr. 214. 3. Mod. 75. Vern. 120.

Sect. 3. And for the like reaſons alſo it hath been reſolved, that the grant of the ſole (*b*) ingroſſing of wills and inventories in a ſpiritual court, or of the ſole (*c*) making of bills, pleas, and writs in a court of law, to any particular perſon, is void.

10. Mod. 107. 131. 133.

(d) 11. Co. 84, 85. &c. Mod. 671. Noy 173, &c. 2. Inſt. 47. Vide 2. Atk. 484.

Sect. 4. Alſo it hath been adjudged, that the king's grant of the ſole making, importing, and ſelling of (*d*) playing cards, is void, notwithſtanding the pretence that the playing with them is a matter merely of pleaſure and recreation, and often much abuſed, and therefore proper to be reſtrained; for ſince the playing with them is in itſelf lawful and innocent, and the making of them an honeſt and laborious trade, there is no more reaſon why any ſubject ſhould be hindered from getting his livelihood by this than by any other employment.

3. Inſt. 181. 2. Inſt. 47. 62.

Sect. 5. Alſo it is holden, that the procuring or making uſe of an unlawful monopoly is farther reſtrained by the common law, by ſubjecting thoſe who are guilty thereof to a fine and impriſonment for the offence, as being *malum in ſe*, and contrary to the ancient and fundamental laws of the kingdom. And it is ſaid, that there are precedents of proſecutions of this kind in former days; but I cannot find any modern inſtance thereof.

Sect. 6. By 21. Jac. 1. c. 3. "All monopolies, and all "commiſſions, grants, licences, charters and letters patents "to any perſon or perſons, bodies politic or corporate whatſoever, of or for the ſole buying, ſelling, making, working, or uſing of any thing within this realm, or *Wales*, "or of any other monopolies, and all proclamations, inhibitions, reſtraints, warrants of aſſiſtance, and all other "matters whatſoever any way tending to the inſtituting, "ſtrengthening, furthering, or countenancing of the ſame, "or any of them, are altogether contrary to the laws of this "realm, and ſo are and ſhall be utterly void, and of none "effect, and in nowiſe to be put in ure or execution."

Sect.

Sect. 7. And by 21. Jac. 1. c. 3. ſ. 2. " All perſons, bodies politic and corporate whatſoever, ſhall be diſabled " and uncapable to have, uſe, exerciſe, or put in ure any " monopoly, or any ſuch commiſſion, grant, or licence, " &c. or other thing tending as aforeſaid, or any liberty, " power, or faculty, grounded or pretended to be grounded " upon them, or any of them."

Sect. 8. By 21. Jac. 1. c. 3. ſ. 7. " The ſaid act ſhall " not extend to any grant, privilege, power, or authority " whatſoever before the ſaid act, made, granted, allowed, or " confirmed by any act of parliament, ſo long as the ſame " ſhall continue in force."

Sect. 9. And by 21. Jac. 1. c. 3. ſ. 9. " Nothing in " the ſaid act contained ſhall be in any wiſe prejudicial to " any city, borough, or town corporate within this realm, " concerning any grants, charters, or letters patents to " them made, or concerning any cuſtom uſed by or within " them, or unto any corporations, companies, or fellow- " ſhips of any art, trade, occupation, or myſtery, or to any " companies or ſocieties of merchants within this realm, " erected for the maintenance, enlargement, or ordering of " any trade or merchandize; but that the ſame charters, " cuſtoms, corporations, &c. and their liberties and immu- " nities ſhall be of ſuch force and effect as they were before " the making of the ſaid act, and of none other."

Sect. 10. By 21. Jac. 1. c. 3. ſ. 10. " Nothing in the ſaid " act ſhall extend to any commiſſion, grants, or letters pa- " tents, concerning the digging, making, or compounding " of ſaltpetre, or gunpowder, or the caſting or making of " ordnance, or ſhot for ordnance; nor to any grant or let- " ters patents of any office erected before the making of the " ſaid ſtatute, and then in being, and put in execution, other " than ſuch offices as had been decried by proclamation; but " that all ſuch grants, &c. ſhall be of the like force and ef- " fect, and no other, as if the ſaid act had never been made."

† *Sect.* 11. But it is enacted by 16. Car. 1. c. 21. " That " it ſhall be lawful for all perſons, as well ſtrangers as natu- " ral-born ſubjects, to import any quantities of gunpowder " whatſoever, paying ſuch cuſtoms and duties for the ſame " as by parliament ſhall be limited; and that it ſhall be " lawful for all his majeſty's ſubjects of this his realm of " *England*, to make and ſell any quantities of gunpowder at " his pleaſure, and alſo to bring into this kingdom any " quantities of ſaltpetre, brimſtone, or any other materials " for the making of gunpowder: and that if any perſon ſhall

1. Jac. 2. c. 8. 5. Geo. 1. c. 26. 11. Geo. 1. c. 23. 4. Geo. 2. c. 29. 15. Geo. 2. c. 32. 21. Geo. 2. c. 38. 29. Geo. 2. c. 16.

" put in execution any letters patents, proclamation, edict, " act, order, warrant, reſtraint, or other inhibition what- " ſoever, whereby the importation of gunpowder, ſaltpetre, " brimſtone, or other the materials aforementioned, ſhall " be anywiſe prohibited or reſtrained, he ſhall incur *a præ-* " *munire.*"

3. Inſt. 185. *Sect.* 12. By 21. Jac. 1. c. 3. ſ. 11, 12. " Nothing in " the ſaid act contained ſhall extend to any commiſſion or " grant concerning the digging, compounding, or making " of allum, or allum mines, &c. nor concerning the licen- " ſing of the keeping of any tavern or ſelling of wines, to be " ſpent in the manſion-houſe, or other place in the tenure " or occupation of the party ſelling the ſame; and a farther " proviſion is made in the latter part of the ſtatute, for ſome " particular grants to particular corporations and perſons, " as *Newcaſtle upon Tyne, &c.*"

3. Inſt. 185. *Sect.* 13. But it is ſaid, that the ſaid clauſe relating to allum was needleſs, becauſe all ſuch mines belong of courſe to the perſons in whoſe grounds they are, and therefore no privilege concerning them can be granted but in the king's own ground.

As to THE SECOND POINT, *viz.* In what manner illegal monopolies may be ſuppreſſed.

Sect. 14. By 21. Jac. 1. c. 3. ſ. 3. " All monopolies, " and all ſuch commiſſions, grants, and licences, &c. and all " other things tending as aforeſaid, and the force and vali- " dity of them, ought to be, and ſhall be examined, heard, " tried, and determined, by and according to the common " laws of this realm, and not otherwiſe."

3. Inſt. 182, 183. 2. Atk. 484. *Sect.* 15. In the conſtruction of this clauſe it hath been holden, that all matters of this kind ought to be tried in the courts of common law only, and not at the council table, or in the court of chancery, or any other court of like nature (3).

(3) Chancery will never eſtabliſh a right claimed under a charter from the crown, till there has been an action at law to try the right, 2. Atkyns 484. But it is the higheſt point of the Lord Chancellor's juriſdiction to cancel the king's letters patent under the Great Seal, 4. Inſt. 88. And where a patent is granted to the prejudice of the ſubject, the king of right is to permit him upon his petition to uſe his name for the repeal of it in *a ſcire facias* at the king's ſuit, 3. Ley. 221. Dyer 197. 8. Coke, Prince's Caſe. 11. Coke 74. 2. Ventris 344. 6. Mod. 229. But queſtions concerning the effect and extent of letters patents can only be tried in the king's courts, Cowp. 173.

Sect.

Sect. 16. And by 21. Jac. 1. c. 3. ſ. 4. "If any perſon ſhall be hindered, grieved, diſturbed, or diſquieted, or his goods or chattels any way ſeized, attached, diſtrained, taken, carried away, or detained, by occaſion or pretext of any monopoly, or of any ſuch commiſſion, grant, or licence, &c. or other matter or thing tending as aforeſaid, and will ſue to be relieved in any of the premiſes, he ſhall have his remedy for the ſame at the common law, by action grounded on the ſaid ſtatute, to be heard and determined in the king's bench, common pleas, or exchequer, againſt the party by whom he ſhall be ſo hindered or grieved, &c. or by whom his goods ſhall be ſo ſeized or attached, &c. wherein every ſuch perſon which ſhall be ſo hindered or grieved, &c. or whoſe goods ſhall be ſo ſeized or attached, &c. ſhall recover three times ſo much as the damages which he ſuſtained by means of ſuch hindrance, &c. and double coſts; and in ſuch ſuits, or for the ſtaying or delaying thereof, no eſſoin, protection, wager of law, aid prayer, privilege, injunction, or order of reſtraint, ſhall be in anywiſe prayed, granted, admitted, or allowed, nor any more than one imparlance: and if any perſon ſhall, after notice that the action depending is grounded upon the ſaid ſtatute, cauſe or procure any action at the common law grounded thereon to be ſtayed or delayed before judgment, by colour or means of any order, warrant, power, or authority, ſave only of the court wherein ſuch action ſhall be depending, or after judgment ſhall cauſe or procure the execution to be ſtayed or delayed, by colour or means of any order, warrant, power or authority, ſave only by writ of error or attaint, that then the ſaid perſon or perſons ſo offending ſhall incur *a præmunire*."

Sect. 17. It is ſaid, that the firſt branch of this laſt clauſe relating to the delaying of cauſes of this kind before judgment, not only extendeth to the privy council, chancery, exchequer chamber, and the like, but alſo to thoſe who ſhall procure any warrant from the king for ſuch purpoſe; and it is ſaid, that the latter branch relating to the delaying of execution after judgment extendeth even to the judges of the court where the cauſe is depending. 3. Inſt. 183.

As to THE THIRD POINT, *viz.* In what caſes the king may grant LETTERS PATENT for the ſole making and vending of any manufacture, &c.

Sect. 18. It ſeems to be the better opinion, that the king may grant to particular perſons the ſole uſe of ſome particular employments (as of printing the *holy ſcriptures*, and *law books*, 1. Mod. 256. 3. Keb. 792. 3. Mod. 75. Lucas 106, 107.

books, &c.), whereof an unreſtrained liberty might be of dangerous conſequence.

† *Sect.* 19. And by 21. Jac. 1. c. 3. ſ. 10. it is provided, "That the reſtraints of that ſtatute ſhall not extend to any "letters patents or grants of privilege concerning printing."

Noy 182, 183. *Sect.* 20. It ſeemeth clear, that the king may, for a reaſonable time, make a good grant to any one of the ſole uſe of any art invented or firſt brought into the realm by the grantee.

Sect. 21. Alſo by 21. Jac. 1. c. 3. ſ. 6. "No declaration "in the ſtatute mentioned ſhall extend to any LETTERS PA-"TENTS and grants of privilege for the term of *fourteen* "*years*, or under, of the ſole working or making of any "manner of new manufactures within this realm, to the "true and firſt inventor and inventors of ſuch manufac-"tures, which others, at the time of making ſuch letters "patents and grants, ſhall not uſe, SO AS ALSO they be not "contrary to the law, nor miſchievous to the ſtate, by rai-"ſing prices of commodities at home, or hurt of trade, or "generally inconvenient, the ſaid *fourteen years* to be ac-"counted from the date of the firſt letters patents, or grant "of ſuch privilege, but that the ſame ſhall be of ſuch force "as they ſhould be if the ſaid act had never been made, "and of none other."

3. Inſt. 184. *Sect.* 22. It hath been reſolved, that no new invention concerning the working of any manufacture is within the meaning of this exception, unleſs it be ſubſtantially new, and not barely an additional improvement of an old one.

Edgbury *v.* Stephens, 1. Salk. 447. *Sect.* 23. But it hath been reſolved, that a patent granted for an old invention imported from abroad is good, provided it be entirely new in this kingdom.

3. Inſt. 184. 10. Mod. 181. *Sect.* 24. Alſo it hath been holden, that a new invention to do as much work in a day by an engine, as formerly uſed to employ many hands, is not within the ſaid exception, becauſe it is inconvenient in turning ſo many labouring men to idleneſs (4).

(4) But ſee Arkwright's caſe *contra*.

3. Inſt. 184. Godb. 125. *Sect.* 25. Alſo it ſeemeth clear, that no old manufacture in uſe before can be prohibited in any grant of the ſole uſe of any ſuch new invention.

Turner *v.* Winter, 1. T. Rep. 602. *Sect.* 26. And it is decided, that a patent is void if the ſpecification is ambiguous, or gives directions which tend to miſlead the publick.

As

As to THE FOURTH POINT, *viz.* How far authors and bookſellers have an excluſive copy-right in literary works, I ſhall conſider,

1. For what length of time ſuch copy-right may continue.

2. How far the univerſities are intitled to copy-right.

3. In what manner copies are to be entered at ſtationers-hall.

4. In what manner ſuch copy-right may be aſſigned.

5. What ſhall be conſidered literary works, and what as *pirating* a copy-right.

6. What remedies are given to preſerve this right.

As to the firſt particular, *viz.* For what length of time ſuch copy-right may continue.

† *Sect.* 27. By 8. Ann, c. 19. "The author of any "book or books, and his aſſignee or aſſigns, ſhall have "the ſole liberty of printing and reprinting ſuch book and "books for the term of *fourteen years*, to commence from "the day of firſt publiſhing the ſame, and no longer: "PROVIDED ALWAYS, that after the expiration of the "ſaid term of fourteen years, the ſole right of printing or "diſpoſing of copies ſhall return to the authors thereof, if "they are then living, for another term of fourteen years."

† *Sect.* 28. It has been decided, upon great argument and deliberation, that the ſole and excluſive copy-right in perpetuity which was conceived to remain in authors, or their aſſigns, by the common law, after the publication of their works, is taken away by the above ſtatute, and that they have now no other right than that which the ſtatute confers.

The caſe of Miller *v* Taylor, 4. Burr. 2303. to 2417.

† *Sect.* 29. It is ſaid that this ſtatute, being intended to ſecure the property of books in the authors themſelves, or the purchaſers of the copy, as ſome recompence for their pains and labour in writing ſuch works as may be uſeful to the learned world, ſhall not be conſidered as eſtabliſhing a monopoly, and therefore ought to receive a liberal conſtruction.

Ld. Hardwicke, 2. Atk. 143.

As

As to the ſecond particular, *viz.* How far the univerſities are intitled to copy-right.

† *Sect.* 30. By 8. Ann, c. 19. ſ. 9. it is provided, "That "nothing in the act contained ſhall extend, or be conſtrued "to extend, either to prejudice or confirm any right that "the univerſities of *Oxford* and *Cambridge*, or the four "univerſities in *Scotland*, or any of them, or any perſon "or perſons have or claim to have to the printing or re-"printing any book or copy already printed or hereafter to "be printed."

Univerſities, &c. to have, for ever, the ſole right of printing, &c.

Sect. 31. And by 15. Geo 3. c. 53. "The ſaid univerſi-"ties of *England* and *Scotland*, and the colleges of *Eton*, "*Weſtminſter*, and *Wincheſter* reſpectively, ſhall, at their ſe-"veral preſſes, have, for ever, the ſole liberty of printing "and reprinting all ſuch books as ſhall at any time here-"tofore have been, or (having not been heretofore pub-"liſhed or aſſigned) ſhall at any time hereafter be be-"queathed, or otherwiſe given by the author or authors of "the ſame reſpectively, or the repreſentatives of ſuch au-"thor or authors, to or in truſt for the ſaid univerſities, "or to or in truſt for any college or houſe of learning "within the ſame, or to or in truſt for the ſaid four uni-"verſities in *Scotland*, or to or in truſt for the ſaid colleges "of *Eton*, *Weſtminſter*, and *Wincheſter*, or any of them, "for the purpoſes aforeſaid, unleſs the ſame ſhall have "been bequeathed or given, or ſhall hereafter be bequeathed "or given, for any term of years, or other limited term; "any law or uſage to the contrary hereof in any wiſe not-"withſtanding."

Perſons printing or ſelling ſuch books ſhall forfeit the ſame, and alſo 1d. for every ſheet;

† *Sect.* 32. By 15. Geo. 3. c. 53. ſ. 2. it is further "enacted, "That if any bookſeller, printer, or other per-"ſon whatſoever, ſhall print, reprint, or import, or cauſe "to be printed, reprinted, or imported, any ſuch book or "books; or, knowing the ſame to be ſo printed or re-"printed, ſhall ſell, publiſh, or expoſe to ſale, or cauſe "to be ſold, publiſhed, or expoſed to ſale, any ſuch book or "books; then ſuch offender or offenders ſhall forfeit ſuch "book or books, and all and every ſheet or ſheets, being "part of ſuch book or books, to the univerſity, college, "or houſe of learning reſpectively, to whom the copy of "ſuch book or books ſhall have been bequeathed or given "as aforeſaid, who ſhall forthwith damaſk and make waſte "paper of them; and further, that every ſuch offender or "offenders ſhall forfeit one penny for every ſheet which "ſhall be found in his, her, or their cuſtody, either printed "or printing, publiſhed or expoſed to ſale, contrary to the "true

" true intent and meaning of this act; the one moiety thereof to the king's moſt excellent majeſty, his heirs and ſucceſſors, and the other moiety thereof to any perſon or perſons who ſhall ſue for the ſame; to be recovered in any of his majeſty's courts of record at *Weſtminſter*, or in the court of ſeſſion in *Scotland*, by action of debt, bill, plaint, or information, in which no wager of law, eſſoin, privilege, or protection, or more than one imparlance, ſhall be allowed." one moiety to his majeſty, and the other to the proſecutor.

† *Sect.* 33. But by 15. Geo. 3. c. 53. ſ. 3. it is provided, " That nothing in this act ſhall extend to grant any exclusive right, otherwiſe than ſo long as the books or copies belonging to the ſaid univerſities or colleges are printed only at their own printing preſſes within the ſaid univerſities or colleges reſpectively, and for their ſole benefit and advantage; and that if any univerſity or college ſhall delegate, grant, leaſe, or ſell their copy-rights, or exclusive rights of printing the books hereby granted, or any part thereof, or ſhall allow, permit, or authoriſe any perſon or perſons, or bodies corporate, to print or reprint the ſame, that then the privileges hereby granted are to become void and of no effect, in the ſame manner as if this act had not been made; but the ſaid univerſities and colleges, as aforeſaid, ſhall nevertheleſs have a right to ſell ſuch copies ſo bequeathed or given as aforeſaid, in like manner as any author or authors now may do under the proviſions of the ſtatute of the eighth year of her majeſty queen *Anne*."

† *Sect.* 34. By 15. Geo. 3. c. 53. ſ. 4. " And whereas many perſons may through ignorance offend againſt this act, unleſs ſome proviſion be made whereby the property of every ſuch book as is intended by this act to be ſecured to the ſaid univerſities, colleges, and houſes of learning within the ſame, and to the ſaid univerſities in *Scotland*, and to the reſpective colleges of *Eton*, *Weſtminſter*, and *Wincheſter*, may be aſcertained and known;" be it therefore enacted by the authority aforeſaid, " That nothing in this act contained ſhall be conſtrued to extend to ſubject any bookſeller, printer, or other perſon whatſoever, to the forfeitures or penalties herein mentioned, for or by reaſon of the printing or reprinting, importing or expoſing to ſale, any book or books, unleſs the title to the copy of ſuch book or books, which has or have been already bequeathed or given to any of the ſaid univerſities or colleges aforeſaid, be entered in the regiſter-book of the company of ſtationers kept for that purpoſe, in ſuch manner as hath been uſual, on or before the twenty-fourth day of *June*, No perſon ſubject to penalties, unleſs entered before, &c. Books muſt be entered within two months after bequeſt.

" one

" one thouſand ſeven hundred and ſeventy-five; and of " all and every ſuch book or books as may or ſhall here- " after be bequeathed or given as aforeſaid, be entered in " ſuch regiſter within the ſpace of two months after any " ſuch bequeſt or gift ſhall have come to the knowledge of " the vice chancellors of the ſaid univerſities, or heads of " houſes and colleges of learning, or of the principal of " any of the ſaid four univerſities reſpectively; for every " of which entries ſo to be made as aforeſaid, the ſum of " ſix-pence ſhall be paid, and no more; which ſaid regiſ- " ter-book ſhall and may, at all ſeaſonable and convenient " times, be referred to, and inſpected by any bookſeller, " printer, or other perſon, without any fee or reward; and " the clerk of the ſaid company of ſtationers ſhall, when " and as often as thereunto required, give a certificate " under his hand of ſuch entry or entries, and for every " ſuch certificate may take a fee not exceeding ſix-pence."

If clerk neglect to make entry, &c. proprietor to have like benefit, &c.

† *Sect.* 35. By 15. Geo. 3. c. 53. ſ. 5. it is further enacted, " That if the clerk of the ſaid company of ſtation- " ers for the time being ſhall refuſe or neglect to regiſter, " or make ſuch entry or entries, or to give ſuch certificate, " being thereunto required by the agent of either of the " ſaid univerſities or colleges aforeſaid, lawfully authoriſed " for that purpoſe, then either of the ſaid univerſities or " colleges aforeſaid, being the proprietor of ſuch copy- " right or copy-rights as aforeſaid (notice being firſt given " of ſuch refuſal by advertiſement in the *Gazette*), ſhall have " the like benefits as if ſuch entry or entries, certificate or " certificates, had been duly made and given; and the clerk " ſo refuſing ſhall, for every ſuch offence, forfeit twenty " pounds to the proprietor or proprietors of every ſuch " copy-right; to be recovered in any of his majeſty's courts " of record at *Weſtminſter*, or in the court of ſeſſion in " *Scotland*, by action of debt, bill, plaint, or information, " in which no wager of law, eſſoin, privilege, protection, " or more than one imparlance, ſhall be allowed."

Limitation of actions.

† *Sect.* 36. And by 15. Geo. 3. c. 53. ſ. 7. it is further enacted, " That if any action or ſuit ſhall be commenced " or brought againſt any perſon or perſons whatſoever, for " doing, or cauſing to be done, any thing in purſuance of " this act, the defendants in ſuch action may plead the ge-

General iſſue.

" neral iſſue, and give the ſpecial matter in evidence; and " if upon ſuch action a verdict, or if the ſame ſhall be " brought in the court of ſeſſion in *Scotland*, a judgment be " given for the defendant, or the plaintiff become nonſuited, " and diſcontinue his action, then the defendant ſhall have

" and

" and recover his full coſts, for which he ſhall have the " ſame remedy as a defendant in any caſe by law hath."

As to the third particular, *viz.* In what manner copies are to be entered at ſtationers-hall.

† *Sect.* 37. By 8. Ann, c. 19. ſ. 2. " And whereas many perſons may through ignorance offend againſt this act, unleſs ſome proviſion be made whereby the property in every ſuch book as is intended by this act to be ſecured to the proprietor or proprietors thereof, may be aſcertained, as likewiſe the conſent of ſuch proprietor or proprietors for the printing or reprinting of ſuch book or books may from time to time be known;" be it therefore further enacted, " That nothing in this act contained ſhall be conſtrued to " extend to ſubject any bookſeller, printer, or other per- " ſon whatſoever, to the forfeitures or penalties therein " mentioned, for or by reaſon of the printing or reprinting " of any book or books without ſuch conſent as aforeſaid, " unleſs the title to the copy of ſuch book or books here- " after publiſhed ſhall, before ſuch publication, be entered " in the regiſter-book of the company of ſtationers, in ſuch " manner as hath been uſual, which regiſter-book ſhall " at all times be kept at the hall of the ſaid company, and " unleſs ſuch conſent of the proprietor or proprietors be in " like manner entered as aforeſaid, for every of which ſe- " veral entries ſix-pence ſhall be paid, and no more; which " ſaid regiſter-book may, at all ſeaſonable and convenient " times, be reſorted to, and inſpected by any bookſeller, " printer, or other perſon, for the purpoſes before-men- " tioned, without any fee or reward; and the clerk of the " ſaid company of ſtationers ſhall, when and as often as " thereunto required, give a certificate under his hand of " ſuch entry or entries, and for every ſuch certificate may " take a fee not exceeding ſix-pence."

Copies of books to be entered before publication in the regiſter-book of the company of ſtationers; which may be inſpected at any time without fee.

Clerk of the company to give a certificate of ſuch entry.

† *Sect.* 38. By 8. Ann, c. 19. ſ. 3. it is provided, " That if the clerk of the ſaid company of ſtationers for " the time being ſhall refuſe or neglect to regiſter, or make " ſuch entry or entries, or to give ſuch certificate, being " thereunto required by the author or proprietor of ſuch " copy or copies, in the preſence of two or more credible " witneſſes, that then ſuch perſon and perſons ſo refuſing, " notice being firſt duly given of ſuch refuſal, by an ad- " vertiſement in the *Gazette*, ſhall have the like benefit " as if ſuch entry or entries, certificate or certificates had " been duly made and given; and that the clerks ſo re- " fuſing ſhall, for any ſuch offence, forfeit to the proprietor " of ſuch copy or copies the ſum of twenty pounds, to be " recovered

Penalty of the clerk refuſing ſo to do.

" recovered in any of her majeſty's courts of record at " *Weſtminſter*, by action of debt, bill, plaint, or informa- " tion, in which no wager of law, eſſoin, privilege, or pro- " tection, or more than one imparlance ſhall be allowed."

Nine copies of each book ſhall be delivered to the warehouſe-keeper of the company of ſtationers, for the uſe of the univerſity libraries, &c.

† *Sect.* 39. By 8. Ann, c. 19. ſ. 5. it is provided, " That " nine copies of each book or books, upon the beſt paper " that ſhall be printed and publiſhed as aforeſaid, or re- " printed and publiſhed with additions, ſhall, by the printer " and printers thereof, be delivered to the warehouſe-keeper " of the ſaid company of ſtationers for the time being, at the " hall of the ſaid company, before ſuch publication made, " for the uſe of the royal library, the libraries of the uni- " verſities of *Oxford* and *Cambridge*, the libraries of the four " univerſities in *Scotland*, the library of *Sion College* in *Lon-* " *don*, and the library commonly called the library belong- " ing to the faculty of advocates at *Edinburgh* reſpectively, " which ſaid warehouſe-keeper is hereby required, within " ten days after demand by the keepers of the reſpective li- " braries, or any perſon or perſons by them or any of them " authorized to demand the ſaid copy, to deliver the ſame " for the uſe of the aforeſaid libraries; and if any propri- " etor, bookſeller, or printer, or the warehouſe-keeper of " the ſaid company of ſtationers, ſhall not obſerve the di- " rection of this act therein, that then he and they ſo mak- " ing default in not delivering the ſaid printed copies as " aforeſaid, ſhall forfeit, beſides the value of the ſaid printed " copies, the ſum of five pounds for every copy not ſo de- " livered, as alſo the value of the ſaid printed copy not ſo " delivered; the ſame to be recovered by the queen's ma- " jeſty, her heirs and ſucceſſors, and by the chancellor, " maſters, and ſcholars of any of the ſaid univerſities, and " by the preſident and fellows of *Sion College*, and the ſaid " faculty of advocates at *Edinburgh*, with their full coſts " reſpectively."

Warehouſe-keeper to deliver the books ten days after demand.

Penalty of proprietor, &c. not obſerving the directions of this act.

As to the fourth particular, *viz.* In what manner ſuch copy-right may be aſſigned.

Knaplock *v.* Curle, 4. Vin. Abr. 278.

Sect. 40. It hath been determined that the author is not diveſted of the copy-right by his delivering the manuſcript of it to the printer to be printed, for this is only an authority to the printer to print that edition; and therefore the author may afterwards grant the copy-right to another perſon.

2. Bro. C. C. 80.

Sect. 41. It hath alſo been determined, that if an author make an aſſignment of " all his right and intereſt" in his work, he thereby transfers not only his abſolute right for the firſt fourteen years, but alſo his contingent intereſt in

in the ſecond term that may accrue to him on his being alive at the determination of the firſt.

As to the fifth particular, *viz.* What ſhall be conſidered a literary work, and what a *pirating* of copy-right.

† *Sect.* 42. It has been determined, that a perſon who writes a *ſonata*, or other muſical compoſition, is intitled to the excluſive copy-right of it under 8. Ann, c. 9.; for the recital of the ſtatute ſays, "Whereas printers, bookſellers, "and other perſons have, of late, frequently taken the li- "berty of printing, reprinting, and publiſhing books and "*other writings*, without the conſent of the authors or pro- "prietors of ſuch books and *writings*, &c." and therefore the ſtatute is not confined to language and letters; and muſic is a ſcience and may be written; that is, the compoſer's ideas may be conveyed by ſigns and marks, which is ſufficient; for, by a more narrow interpretation of the ſtatute, algebra, mathematics, arithmetic, hieroglyphics, would be excluded. Bach *v.* Longman, Cowp. 623.

† *Sect.* 43. It hath alſo been determined, that the publication of an epiſtolary correſpondence, either by the permiſſion of the writer or receiver of the letters, is as much the ſubject of copy-right as any other literary work. Pope *v.* Curl, 2. Atk. 342.

† *Sect.* 44. The principal part of Mr. *Gray's* poems had been publiſhed many years; Mr. *Maſon* republiſhed them, with the life of Mr. *Gray*, and introduced other poems of Mr. *Gray's*, till then unpubliſhed; and it was held that this was an original work, and that the author was intitled to copy-right therein. Maſon *v.* Murray, 2. Br. C. C. 85.

† *Sect.* 45. But if an author publiſh a work, as, for inſtance, the tranſlation of *Don Quixote*, and another perſon publiſh the ſame work, only adding plates, the mere act of embelliſhing will not make the ſecond publication an original work. 2. Br. C. C. 85.

† *Sect.* 46. So alſo where a *book of roads* was printed in letter-preſs, and it was republiſhed before the copy-right had expired, with the great roads engraved on copper-plates, and the croſs roads in letter-preſs, it was decreed that this alteration did not make the whole of the ſecond publication original, and an injunction was granted; but if a man make a new ſurvey by actual meaſurement of the ſame roads, of which a ſurvey is before publiſhed, a publication of the ſecond ſurvey would be a new work, how ſimilar ſoever it might be to the firſt publication. Carnan *v.* Bowles, 2. Br. C. C. 80.

Barrow *v.* Nutt, 2. Atk. 143.

† *Sect.* 47. It ſeems to be agreed, that the author of a real and fair abridgment of a work is intitled to the copy-right of it; for abridgments may with great propriety be called new books, becauſe not only the paper and print, but the invention, learning, and judgment of the author is ſhewn in them; and in many caſes abridgments are extremely uſeful, as *Le Journal des Sçavans*, and ſeveral others that might be mentioned, although in ſome inſtances they may prejudice the original work, by miſtaking and curtailing the ſenſe of the author: but when books are colourably ſhortened only, as where a book called "*Modern* "*Crown Law*" appeared in fact borrowed almoſt *verbatim* from *Hale's Pleas of the Crown*, only ſome old repealed ſtatutes left out, and all the *Latin* and *French* quotations put into Engliſh, it was held that the author was not intitled to any copy-right therein.

Giles *v* Wilcox, 2. Atk. 141.

Bar. Chan. Rep. 369.

† *Sect.* 48. So alſo where a ſecond book no otherwiſe varies from the firſt than by leaving out certain parts, and only by that means ſhortening it, it has been held not to be a fair abridgment, and that the author had no copy-right therein.

Dodſley *v.* Kennedy, Ambl. 696.

† *Sect.* 49. But extracts from a work may be publiſhed in a magazine.

Colman *v.* Wathen, 5. Term Rep. 245.

† *Sect.* 50. It hath been determined, that after a dramatic work has been repreſented on the ſtage, and the copy-right of the drama ſold by the author, the repreſentation of the ſame piece on another ſtage is not a piracy within the 8. Ann. c. 19.; for reporting any thing from memory can never be a publication within that ſtatute.

Macklin *v.* Richardſon, Ambler 694.

† *Sect.* 51. But it hath been determined, that if a dramatic author ſuffer his piece to be performed only by his particular permiſſion, taking the copy from the prompter when the repreſentation is over, but never prints or publiſhes it, it is piracy to take down the piece in ſhort-hand while it is repreſenting, and to publiſh it, although the inaccuracies of the ſhort-hand writer are corrected by the memory of the publiſher.

Pope *v.* Curl, 2. Atk. 342. 1. Bl. Rep. 332.

† *Sect.* 52. So alſo *the writer* of familiar letters retains a right to the contents of his letters, and the perſon to whom they are ſent has only a ſpecial property in them; and the ſending does not give a licence to any perſon whatſoever to publiſh them to the world, for the property of them ſubſiſts in the writer.

As

As to the ſixth particular, *viz.* What remedies are given to preſerve copy right.

† *Sect.* 53. By 8. Ann. c. 19. ſ. 1. "If any bookſeller, "printer, or other perſon whatſoever, within the times "granted and limited by this act as aforeſaid, ſhall print, "reprint, or import, or cauſe to be printed, reprinted, or "imported, any ſuch book or books, without the conſent "of the proprietor or proprietors thereof firſt had and "obtained in writing, ſigned in the preſence of two or "more credible witneſſes; or knowing the ſame to be ſo "printed or reprinted, without the conſent of the propriе-"tors, ſhall ſell, publiſh, or expoſe to ſale, or cauſe to be "ſold, publiſhed, or expoſed to ſale, any ſuch book or "books, without ſuch conſent firſt had and obtained as "aforeſaid; then ſuch offender or offenders ſhall forfeit "ſuch book or books, and all and every ſheet or ſheets, "being part of ſuch book or books, to the proprietor or "proprietors of the copy thereof, who ſhall forthwith "damaſk and make waſte paper of them: and further, that "every ſuch offender or offenders ſhall forfeit one penny "for every ſheet which ſhall be found in his, her, or their "cuſtody, either printed or printing, publiſhed, or expoſed "to ſale, contrary to the true intent and meaning of this "act; the one moiety thereof to the queen's moſt excellent "majeſty, her heirs and ſucceſſors, and the other moiety "thereof to any perſon or perſons who ſhall ſue for the "ſame, to be recovered in any of her majeſty's courts of "record at *Weſtminſter*, by action of debt, bill, plaint, or "information, in which no wager of law, eſſoin, privilege, or "protection, or more than one imparlance ſhall be allowed."

† *Sect.* 54. By 8. Ann. c. 19. ſ. 7. it is further enacted, "That nothing in this act contained ſhall extend, or be "conſtrued to extend, to prohibit the importation, vending, "or ſelling of any books in *Greek*, *Latin*, or any other "foreign language printed beyond the ſeas; any thing in "this act contained to the contrary notwithſtanding.

† *Sect.* 55. By 8. Ann. c. 19. ſ. 6. it is further enacted, "That if any perſon or perſons incur the penalties con-"tained in this act, in that part of *Great Britain* called "*Scotland*, they ſhall be recoverable by any action before the "court of ſeſſion there."

† *Sect.* 56. By 8. Ann. c. 19. ſ. 8. it is further enacted, "That if any action or ſuit ſhall be commenced or brought "againſt any perſon or perſons whatſoever, for doing or "cauſing to be done any thing in purſuance of this act,

" the defendants in such action may plead the general issue,
" and give the special matter in evidence; and if upon such
" action a verdict be given for the defendant, or the plaintiff
" become nonsuited, or discontinue his action, then the
" defendant shall have and recover his full costs, for which
" he shall have the same remedy as a defendant in any case
" by law hath."

General issue.

† *Sect.* 57. By 8 Ann. c. 19. s. 10. it is further enacted,
" That all actions, suits, bills, indictments, or informations
" for any offence that shall be committed against this act,
" shall be brought, sued, and commenced within three
" months next after such offence committed; or else the
" same shall be void and of none effect."

Actions for offences against this act to be brought in three months.

† *Sect.* 58. It hath been determined on this statute, that if a book has been pirated, and printed in *Ireland*, yet that will not excuse the vendor from the penalties of this act.

Pope *v.* Curl, 2. Atk. 342.

† *Sect.* 59. So also it hath been determined, that an action may be brought, or an injunction obtained in a court of equity, although the publication be not entered at *Stationers' Hall.*

Lord Mansfield, 1. Bl. Rep. 330.

† *Sect.* 60. But no one can be prosecuted for the penalties inflicted by 8. Ann. c. 19. s. 1. unless the work is entered according to the direction of 15. Geo. 3. c. 53. which enacts, " That no person or persons what-
" soever shall be subject to the penalties in the said
" act mentioned, for or by reason of the printing or
" reprinting, importing, or exposing to sale, any book or
" books, without the consent mentioned in the said act,
" unless the title to the copy of the whole of such book,
" and every volume thereof, be entered, in manner directed
" by the said act, in the register-book of the company of
" stationers, and unless nine such copies of the whole of
" such book or books, and every volume thereof printed
" and published, or reprinted or republished, as therein
" mentioned, shall be actually delivered to the warehouse-
" keeper of the said company, as therein directed, for the se-
" veral uses of the several libraries in the said act mentioned."

No person subject to penalties in the said act, unless the title to the copy of the whole be entered, &c.

† *Sect.* 61. By 12. Geo. 2. c. 36. s. 1. " It shall not be lawful
" for any person or persons whatsoever to import or bring
" into this kingdom for sale, any book or books first com-
" posed or written, and printed and published in this king-
" dom, and reprinted in any other place or country
" whatsoever; and if any person or persons shall import or
" bring into this kingdom for sale any printed book or
" books so first composed or written, and printed in this
" king

" kingdom, and reprinted in any other place or country, " as aforeſaid; or knowing the ſame to be ſo reprinted or " imported, contrary to the true intent and meaning of " this act, ſhall ſell, publiſh, or expoſe to ſale any ſuch " book or books; then every ſuch perſon or perſons ſo " doing or offending, ſhall forfeit the ſaid book or books, " and all and every ſheet or ſheets thereof; and the ſame " ſhall be forthwith damaſked, and made waſte paper; and " further, that every ſuch offender or offenders ſhall forfeit " the ſum of five pounds, and double the value of every " book which he or they ſhall ſo import or bring into this " kingdom, or ſhall knowingly ſell, publiſh, or expoſe to " ſale, or cauſe to be ſold, publiſhed, or expoſed to ſale, " contrary to the true intent and meaning of this act; the " one moiety thereof to the king's moſt excellent majeſty, " his heirs and ſucceſſors, and the other moiety to any " perſon or perſons that ſhall ſue for the ſame; to be re- " covered with coſts of ſuit in any of his majeſty's courts " of record at *Weſtminſter* by action of debt, bill, plaint, or " information; in which no wager of law, eſſoin, or pro- " tection, or more than one imparlance ſhall be allowed; " and if the offence be committed in *Scotland*, to be reco- " vered before the court of ſeſſion there, by ſummary " action: provided that this act ſhall not extend to any " book that has not been printed or reprinted in this king- " dom within twenty years before the ſame ſhall be imported."

† *Sect.* 62. By 12. Geo. 2. c. 36. ſ. 2. it is further enacted, " That nothing in this act contained ſhall extend to pre- " vent or hinder the importation of any book firſt compoſed " or written, and printed in this kingdom, which ſhall or " may be reprinted abroad, and inſerted among other books " or tracts, and to be ſold therewith, in any collection " where the greateſt part of ſuch collection ſhall have been " firſt compoſed or written, and printed abroad; any thing " in this act contained to the contrary notwithſtanding."

† *Sect.* 63. It hath been determined under this ſtatute, that two penalties may be incurred on the ſame day, if the acts of ſale are diſtinct. Brooke *v.* Miliken, 3. Term Rep. 509.

† *Sect.* 64. By 34. Geo. 3. c. 20. ſ. 57. " It ſhall not be " lawful for any perſon or perſons whatſoever to import or " bring into this kingdom, for ſale, any book or books " firſt compoſed, written, or printed, and publiſhed in this " kingdom, and reprinted in any other country or place " whatſoever; and if any perſon or perſons ſhall import or " bring, or cauſe to be imported or brought into this " kingdom, for ſale, any printed book or books firſt com- " poſed, written, or printed and publiſhed in this king- Penalty on importing for ſale, books firſt printed in this kingdom, and reprinted in any other, &c.

" dom, and reprinted in any other country or place as " aforeſaid, or ſhall knowingly ſell, publiſh, expoſe to ſale, " or have in his, her, or their poſſeſſion for ſale, any ſuch " book or books, then every ſuch book and books ſhall be " forfeited, and ſhall and may be ſeized by any officer or " officers of cuſtoms or exciſe, and the ſame ſhall be forth- " with made waſte paper; and further, that every perſon " and perſons ſo offending, being duly convicted thereof, " ſhall for every ſuch offence forfeit the ſum of ten pounds, " and double the value of each and every copy of ſuch " book or books which he, ſhe, or they, ſhall ſo import " or bring, or cauſe to be imported or brought into this " kingdom, or ſhall knowingly ſell, publiſh, expoſe to ſale, " or cauſe to be ſold, publiſhed, or expoſed to ſale, or ſhall " have in his, her, or their poſſeſſion for ſale, contrary to " the true intent and meaning of this act; and the com- " miſſioners of cuſtoms in *England* and *Scotland* reſpec- " tively (in caſe the ſame ſhall be ſeized by any officer or " officers of the cuſtoms), and the commiſſioners of exciſe " in *England* and *Scotland* reſpectively (in caſe the ſame " ſhall be ſeized by any officer or officers of exciſe), ſhall " alſo reward the officer or officers who ſhall ſeize any ſuch " books which ſhall be ſo made waſte paper of, with ſuch " ſum or ſums of money as they the ſaid reſpective com- " miſſioners ſhall think fit, not exceeding the value of ſuch " books; ſuch rewards reſpectively to be paid by the ſaid " reſpective commiſſioners out of any money in their hands " reſpectively ariſing from the duties by this act impoſed: " provided, that this act ſhall not extend to any book that " has not been printed or reprinted in this kingdom within " twenty years before the ſame ſhall be imported, nor to " any book reprinted abroad, and inſerted among other " books or tracts to be ſold therewith in any collection " where the greateſt part of ſuch collection ſhall have been " firſt compoſed or written abroad."

Commiſſioners of cuſtoms and exciſe may reward their officers ſeizing ſuch books.

As to the FIFTH POINT, *viz.* How far engravers have an excluſive right to engravings.

† *Sect.* 65. By 8. Geo. 2. c. 13. ſ. 1. it is enacted, "That " every perſon who ſhall invent and deſign, engrave, etch, " or work in *mezzotinto* or *chiaro oſcuro*, or from his own " works and inventions ſhall cauſe to be deſigned and en- " graved, etched, or worked in *mezzotinto* or *chiaro oſcuro*, " any hiſtorical or other print or prints, ſhall have the ſole " right and liberty of printing and reprinting the ſame for " the term of fourteen years, to commence from the day of " the firſt publiſhing thereof, which ſhall be truly engraved " with the name of the proprietor on each plate, and " printed

Property of prints veſted in the inventor for fourteen years. 3. Wiſ. 66.

" printed on every ſuch print or prints; and that if any " printſeller or other perſon whatſoever, from and after the " twenty-fourth day of *June* one thouſand ſeven hundred " and thirty-five, within the time limited by this act, ſhall " engrave, etch, or work as aforeſaid, or in any other " manner copy and ſell, or cauſe to be engraved, etched, or " copied and ſold, in the whole or in part, by varying, " adding to, or diminiſhing from the main deſign, or ſhall " print, reprint, or import for ſale, or cauſe to be printed, " reprinted, or imported for ſale, any ſuch print or prints, " or any parts thereof, without the conſent of the pro- " prietor or proprietors thereof firſt had and obtained in " writing, ſigned by him or them reſpectively in the pre- " ſence of two or more credible witneſſes, or knowing the " ſame to be ſo printed or reprinted, without the conſent " of the proprietor or proprietors, ſhall publiſh, ſell, or " expoſe to ſale, or otherwiſe, or in any other manner diſ- " poſe of, or cauſe to be publiſhed, ſold, or expoſed to ſale, " or otherwiſe, or in any other manner diſpoſed of, any " ſuch print or prints, without ſuch conſent firſt had and " obtained as aforeſaid, then ſuch offender or offenders " ſhall forfeit the plate or plates on which ſuch print or " prints are or ſhall be copied, and all and every ſheet or " ſheets (being part of, or whereon ſuch print or prints " are or ſhall be ſo copied or printed) to the proprietor or " proprietors of ſuch original print or prints, who ſhall " forthwith deſtroy and damask the ſame; and further, " that every ſuch offender or offenders ſhall forfeit five " ſhillings for every print which ſhall be found in his, her, " or their cuſtody, either printed or publiſhed, and expoſed " to ſale, or otherwiſe diſpoſed of, contrary to the true " intent and meaning of this act; the one moiety thereof " to the king's moſt excellent majeſty, his heirs and ſuc- " ceſſors, and the other moiety thereof to any perſon or " perſons that ſhall ſue for the ſame, to be recovered in any " of his majeſty's courts of record at *Weſtminſter*, by action " of debt, bill, plaint, or information, in which no wager " of law, eſſoin, privilege, or protection, or more than one " imparlance, ſhall be allowed."

Proprietor's name to be affixed to each print.

Penalty on printſellers or others piracting the ſame.

† *Sect.* 66. By 8. Geo. 2. c. 13. ſ. 2. it is enacted, " That it ſhall and may be lawful for any perſon or perſons, " who ſhall hereafter purchaſe any plate or plates for " printing, from the original proprietors thereof, to print " and reprint from the ſaid plates, without incurring any " of the penalties in this act mentioned."

Not to extend to purchaſers of plates from the original proprietors.

† *Sect.* 67. By 8. Geo. 2. c. 13. ſ. 3. it is further enacted, " That if any action or ſuit ſhall be commenced

Limitation of actions.

" or brought againſt any perſon or perſons whatſoever for " doing or cauſing to be done any thing in purſuance of " this act, the ſame ſhall be brought within the ſpace of " three months after ſo doing; and the defendant and " defendants, in ſuch action or ſuit, ſhall or may plead

General iſſue.

" the general iſſue, and give the ſpecial matter in evidence; " and if upon ſuch action or ſuit a verdict ſhall be given " for the defendant or defendants, or if the plaintiff or " plaintiffs become nonſuited, or diſcontinue his, her, or " their action or actions, then the defendant or defendants " ſhall have and recover full coſts, for the recovery whereof " he ſhall have the ſame remedy as any other defendant or " defendants in any other caſe hath or have by law."

† *Sect.* 68. By 8. Geo. 2. c. 13. ſ. 4. it is further enacted, " That if any action or ſuit ſhall be commenced or brought " againſt any perſon or perſons for any offence committed " againſt this act, the ſame ſhall be brought within the " ſpace of three months after the diſcovery of every ſuch " offence, and not afterwards; any thing in this act con- " tained to the contrary notwithſtanding."

Original inventors, &c. of prints, &c.

† *Sect.* 69. By 7. Geo. 3. c. 38. ſ. 1. it is enacted, " That all and every perſon and perſons who ſhall invent " or deſign, engrave, etch, or work in *mezzotinto* or *chiaro* " *oſcuro*, or from his own work, deſign, or invention, ſhall " cauſe or procure to be deſigned, engraved, etched, or " worked in *mezzotinto* or *chiaro oſcuro*, any hiſtorical print " or prints, or any print or prints, of any portrait, con- " verſation, landſcape, or architecture, map, chart, or plan, " or any other print or prints whatſoever, ſhall have, and " are hereby declared to have, the benefit and protection of " the ſaid act and this act, under the reſtrictions and limi- " tations hereinafter mentioned."

Intitled to the benefit of recited and preſent act, &c.

† *Sect.* 70. By 7. Geo. 3. c. 38. ſ. 2. " All and every " perſon and perſons who ſhall engrave, etch, or work in " *mezzotinto* or *chiaro oſcuro*, or cauſe to be engraved, etched, " or worked, any print taken from any picture, drawing, " model, or ſculpture, either ancient or modern, ſhall have, " and are hereby declared to have, the benefit and pro- " tection of the ſaid act, and this act, for the term herein- " after mentioned, in like manner as if ſuch print had been " graved or drawn from the original deſign of ſuch graver, " etcher, or draftſman; and if any perſon ſhall engrave, " print, and publiſh, or import for ſale, any copy of any " ſuch print, contrary to the true intent and meaning of " this and the ſaid former act, every ſuch perſon ſhall be " liable

" liable to the penalties contained in the ſaid act, to be " recovered as therein and hereinafter is mentioned."

† *Sect.* 71. By 7. Geo. 3. c. 38. ſ. 5. " All and every the " penalties and penalty inflicted by the ſaid act, and ex- " tended, and meant to be extended, to the ſeveral caſes " compriſed in this act, ſhall and may be ſued for and re- " covered in like manner, and under the like reſtrictions " and limitations, as in and by the ſaid act is declared and " appointed; and the plaintiff or common informer, in " every ſuch action (in caſe ſuch plaintiff or common " informer ſhall recover any of the penalties incurred by " this or the ſaid former act), ſhall recover the ſame, " together with his full coſts of ſuit."

† *Sect.* 72. By 7. Geo. 3. c. 38. ſ. 6. " The party pro- " ſecuting ſhall commence his proſecution within the ſpace " of ſix calendar months after the offence committed."

† *Sect.* 73. By 7. Geo. 3. c. 38. ſ. 7. it is further enacted, " That the ſole right and liberty of printing and " reprinting intended to be ſecured and protected by the " ſaid former act and this act, ſhall be extended, continued, " and be veſted in the reſpective proprietors, for the ſpace " of twenty-eight years, to commence from the day of the " firſt publiſhing of any of the works reſpectively herein- " before and in the ſaid former act mentioned." The right intended veſted in the proprietors for twenty-eight years.

† *Sect.* 74. By 7. Geo. 3. c. 38. ſ. 8. " If any action or " ſuit ſhall be commenced or brought againſt any perſon or " perſons whatſoever, for doing, or cauſing to be done, " any thing in purſuance of this act, the ſame ſhall be " brought within the ſpace of ſix calendar months after the " fact committed; and the defendant or defendants, in any " ſuch action or ſuit, ſhall or may plead the general iſſue, " and give the ſpecial matter in evidence; and if, upon ſuch " action or ſuit, a verdict ſhall be given for the defendant " or defendants, or if the plaintiff or plaintiffs become non- " ſuited, or diſcontinue his, her, or their action or actions, " then the defendant or defendants ſhall have and recover " full coſts; for the recovery whereof he ſhall have the " ſame remedy as any other defendant or defendants, in " any other caſe, hath or have by law." Limitation of actions. General iſſue. Full coſts.

† *Sect.* 75. By 17. Geo. 3. c. 57. ſ. 1. it is further enacted, " That if any engraver, etcher, printſeller, or other " perſon ſhall, within the time limited by the aforeſaid acts, " or either of them, engrave, etch, or work, or cauſe or conſent of the proprietor, he ſhall be liable to damages, and " pro- If any engraver, &c. ſhall engrave, &c. any print, without the double coſts.

" procure to be engraved, etched, or worked, in *mezzotinto* " or *chiaro oſcuro*, or otherwiſe, or in any other manner " copy in the whole, or in part, by varying, adding to, or " diminiſhing from, the main deſign, or ſhall print, reprint, " or import for ſale, or cauſe or procure to be printed, re- " printed, or imported for ſale, or ſhall publiſh, ſell, or " otherwiſe diſpoſe of, or cauſe or procure to be publiſhed, " ſold, or otherwiſe diſpoſed of, any copy or copies of any " hiſtorical print or prints, or any print or prints of any " portrait, converſation, landſcape, or architecture, map, " chart, or plan, or any other print or prints whatſoever, " which hath, or have been, or ſhall be, engraved, etched, " drawn, or deſigned, in any part of *Great Britain*, without " the expreſs conſent of the proprietor or proprietors " thereof firſt had and obtained in writing, ſigned by him, " her, or them reſpectively, with his, her, or their own " hand or hands, in the preſence of, and atteſted by, two or " more credible witneſſes, then every ſuch proprietor or " proprietors ſhall and may, by and in a ſpecial action " upon the caſe, to be brought againſt the perſon or perſons " ſo offending, recover ſuch damages as a jury on the trial " of ſuch action, or on the execution of a writ of enquiry " thereon, ſhall give or aſſeſs, together with double coſts of " ſuit."

Blackwell *v.* Harper in chancery, before Lord Hardwicke, Dec. 1740. 2. Atk. 93.

† *Sect.* 76. It has been determined upon this ſtatute, that the words "*invent*," "his own invention," do not confine the copy-right merely to works originating in the imagination of the artiſt, as allegorical or fabulous repreſentations; but that they mean the deſigning or engraving of any thing that is already in nature, as medicinal plants, buildings, houſes, gardens, &c.

Lord Hardwicke. 2. Atk. 93.

† *Sect.* 77. It has alſo been ſaid by very high authority, that the words *ſculpſit et delineavit* added to the name of the perſon who prints the work are ſufficient to ſhew that perſon to be the proprietor.

† *Sect.* 78. It was alſo doubted, whether the property did not veſt in the engraver, deſigner, &c. though the day of the publication be not annexed to the foot of the print, compliance with that direction of the act being thought only neceſſary to make the penalty accrue (*a*). But it has been determined, that the two conditions of the act, *viz. the day* of the firſt publiſhing the print, and *the name* of the proprietor thereof, muſt both of them be engraved and printed, in order that it may be known when the excluſive right of the proprietor ceaſes,

(*a*) Ibid. Sayer *Qui Tam v.* Dicey et al', 3. Wilſon 60.

and

and when and againſt whom the perſon pirating may be guilty of offending againſt the act.

† *Sect.* 79. And it ſeems, that if it appear the date is anterior to the time when the perſon whoſe name the print bears became the proprietor of it, it is not within the protection of the act. Bonner *v.* Field, Sitt. Hil. Term, 1781.

† *Sect.* 80. But it ſeems to be undecided, whether on the aſſignment of a print the name of the inventor or the aſſignee ought to appear. Thompſon *v.* Symonds, 5. Term Rep. 41.

† *Sect.* 81. It hath alſo been determined, that the aſſignee of a print may maintain an action on 17. Geo. 3. c. 57. againſt any perſon who pirates it, and that in ſuch action it is not neceſſary to produce the plate itſelf in evidence, but that the production of one of the prints taken from the original plate is ſufficient; but the *date* muſt always appear on the print. Thompſon *v.* Symonds and Another, 5. Term Rep. 41.

As to the SIXTH POINT, *viz.* How far callico-printers have an excluſive right to their patterns.

† *Sect.* 82. By 27. Geo. 3. c. 38. ſ. 1. it is enacted, "That any perſon who ſhall invent, deſign, and print, or "cauſe to be invented, deſigned, and printed, and become "the proprietor of any new and original pattern or patterns "for printing linens, cottons, callicoes, or muſlins, ſhall "have the ſole right and liberty of printing and reprinting "the ſame for the term of two months, to commence from "the day of the firſt publiſhing thereof, which ſhall be truly "printed with the name of the printer or proprietors at "each end of every ſuch piece of linen, cotton, callicoe, or "muſlin; and that if any callicoe-printer, linen-draper, or "other perſon whatſoever, from and after the firſt day of "*June* one thouſand ſeven hundred and eighty-ſeven, "within the time limited by this act, ſhall print, work, or "copy, ſuch original pattern or patterns, or cauſe to be "printed, worked, or copied, ſuch original pattern or "patterns, or ſhall print or reprint, or cauſe to be printed "or reprinted, any ſuch pattern or patterns, and ſhall publiſh, ſell, or expoſe to ſale, or in any other manner diſpoſe "of, or cauſe to be publiſhed, ſold, or expoſed to ſale, or in "any other manner diſpoſed of, any linen, cotton, callicoe, "or muſlin, ſo printed without the conſent of the proprietor or proprietors thereof firſt had and obtained in writing, "ſigned by him or them reſpectively, in the preſence of two "or more credible witneſſes, knowing the ſame to be ſo "printed or reprinted without the conſent of the proprietor The proprietor of any original pattern for printing linens to have the ſole right of printing it for two months from firſt publication; and whoever ſhall within that period print the ſame, to be liable to an action for damages.

"or

" or proprietors of such pattern, then every such proprietor " or proprietors shall and may, if the offence be committed " in *England*, by and in a special action upon the case, to " be brought against the person or persons so offending, " recover such damages as a jury on the trial of such action, " or on the execution of a writ of enquiry thereon, shall " give or assess, together with costs of suit, in which no " wager of law, essoin, privilege, or protection, or more " than one imparlance, shall be allowed; and if the offence " be committed in *Scotland*, every such proprietor or pro- " prietors shall and may, by an action to be brought before " the court of session, or any judge competent to try civil " causes within his bounds, recover such damages as the " said court of session, or the said judge, shall give or assess, " and for payment whereof decree shall be issued, with full " costs of suit, on which all such execution shall pass as is " competent by the laws and practice of *Scotland* in the like " cases: provided nevertheless, that it shall and may be " lawful for any person or persons who shall hereafter pur- " chase any plate or plates, block or blocks, for printing, " from the original proprietors thereof, to print, reprint, " and expose for sale, or cause to be printed, reprinted, and " exposed for sale, from the said plates or blocks, without " being liable to any action on that account."

but any person purchasing plates from the proprietors may print therefrom.

† *Sect.* 83. By 27. Geo. 3. c. 38. s. 2. " If any action " or suit shall be commenced or brought against any person " or persons whatsoever, for any offence committed against " this act, the same shall be brought within the space of " six months after so doing, and the defendant and defen- " dants, in such action or suit, if brought in *England*, shall " and may plead the general issue, and give the special " matter in evidence; and if, upon such action or suit, a " verdict shall be given for the defendant or defendants, or " if the plaintiff or plaintiffs become nonsuited, or discon- " tinue his, her, or their action or actions, then the defen- " dant or defendants shall have and receive full costs; for " the recovery whereof he shall have the same remedy as " any other defendant or defendants in any other case hath " or have by law; and if such action be brought in *Scot- " land*, and not insisted in, or if the defender be assoilzied, " then the defender shall be entitled to full costs, for the " recovery whereof he shall have the same remedy as here- " inbefore is given to the pursuer."

Mode of prosecuting for offences against this act.

CHAP.

CHAPTER THE EIGHTIETH.

OF FORESTALLING, INGROSSING, AND REGRATING.

FOR the better underſtanding the nature of foreſtalling, ingroſſing, and regrating, and other ſuch like offences, I ſhall conſider

1. How ſuch offences are treated by the common law.

2. How by ſtatute.

As to the FIRST POINT, *viz.* How foreſtalling, ingroſſing, and regrating, are treated by the common law,

I ſhall conſider,

1. What is eſteemed an offence of this kind by the common law.

2. How ſuch offence is puniſhable by the common law.

As to the firſt of theſe particulars, *viz.* What is eſteemed an offence of this kind at common law.

Sect. 1. It is ſaid, that all endeavours whatſoever to enhance the common price of any merchandize, and all kinds of practices which have an apparent tendency thereto, whether by ſpreading falſe (*a*) rumours, or by (*b*) buying things in a market before the accuſtomed hour, or by buying and ſelling again the ſame thing in the ſame (*c*) market, or by any other ſuch like devices, are highly criminal at common law, and that all ſuch offences anciently came under the general notion of foreſtalling, which included all kinds of offences of this nature.

(*a*) 43. Aſſ. 38. 3. Inſt. 195, 196. B. Indictment, 40. Preſentment 12.
(*b*) Crom. 18.
(*c*) Crom. 80.

Sect. 2. And ſurely there can be no attempt of this kind, but muſt be looked upon as a high offence againſt the publick, inaſmuch as it ſo apparently tends to put a check upon trade, to the general inconvenience of the people, by putting it out of their power to ſupply themſelves with a commodity,

commodity, without an unreaſonable expence, which often proves extremely oppreſſive to the poorer ſort, and cannot but give juſt cauſe of complaint to the richeſt.

3. Inſt. 196. Summary 150.

Sect. 3. But it hath been reſolved, that any merchant, whether he be a ſubject or a foreigner, bringing victuals or any other merchandize into the realm, may ſell the ſame in groſs, but that no perſon can lawfully buy within the realm any merchandize in groſs, and ſell the ſame in groſs again, becauſe by ſuch means the price will be inhanced, for the more hands any merchandize paſſeth through, the dearer it muſt grow, becauſe every one will make his profit of it: and if ſuch practices were allowable, a rich man might ingroſs into his hands a whole commodity, and then ſell it at what price he ſhould think fit; which is of ſuch dangerous conſequence, that the bare ingroſſing of a whole commodity, with an intent to ſell it at an unreaſonable price, is an offence indictable at the common law, whether any part thereof be ſold by the ingroſſer, or not.

C. Car. 231, 232.

3. Inſt. 197. Summary 152.

Sect. 4. And ſo jealous is the common law of all practices of this kind, that it will not ſuffer corn to be ſold in the ſheaf, perhaps for this reaſon, becauſe by ſuch means the market is in effect foreſtalled.

As to the ſecond particular, *viz.* In what manner offences of this kind are puniſhable by the common law.

3. Inſt. 195.

Sect. 5. It is ſaid, that by an ancient ſtatute the offender was to be grievouſly amerced for the firſt offence; for the ſecond, to be condemned to the pillory; for the third, to be impriſoned; and for the fourth, to be compelled to abjure the vill. And there ſeems to be no doubt, but that at this day all offenders of this kind are liable to a fine and impriſonment, anſwerable to the heinouſneſs of their offence, upon an indictment at common law.

As to the SECOND POINT, *viz.* In what manner theſe offences are treated by ſtatute.

I ſhall conſider what particular proviſions have been made relating to this matter.

The particular proviſions of this nature are five-fold.

1. The obliging all victuallers to ſell at a reaſonable price.

2. The

2. The allowing all foreigners free liberty of importing and ſelling victuals.

3. The giving the great officers of ſtate a power to tax the price of victuals.

4. The prohibiting conſpiracies to raiſe the price of victuals.

5. The prohibiting all foreſtalling, ingroſſing, and regrating.

As to the firſt particular, *viz.* The obliging all victuallers to ſell at a reaſonable price.

How butchers ſelling unwholeſome meat are to be puniſhed, vide 1. vol. Runnington's ſtatutes p. 187.

Sect. 6. This depends upon 23. Edw. 3. c. 6. by which it is enacted, "That butchers, fiſhmongers, regrators, "hoſtlers, brewers, bakers, poulterers, and other ſellers of "all manner of victuals, ſhall be bound to ſell the ſame for "a reaſonable price, having reſpect to the price that ſuch "victuals ſhall be ſold at in the places adjoining; ſo that "ſuch ſellers have moderate gains, reaſonably to be re-"quired, according to the diſtance of the place from whence "the ſaid victuals be carried; on pain to forfeit double the "value, &c. And the chief officers of towns are required "to ſee this ſtatute executed, on pain of paying the treble "value of the thing ſold, &c." By 4. Hen. 7. c. 3. they ſhall not kill beaſts in walled towns. By 21. Hen. 8. c. 8. they ſhall not kill calves but within the time preſcribed. By 22. Hen. 8. c. 6. they are prohibited from keeping tan-houſes. By 1. Jac. 1. c. 22. they are not to kill calves under five weeks old. By 5. Ann. c. 34. ſ. 2. they are not to ſell cattle to one another in London. By 7. Ann. c. 6. may ſell dead calves or ſheep.

As to the ſecond particular, *viz.* The allowing all foreigners free liberty of importing and ſelling victuals.

Sect. 7. By 6. Rich. 2. c. 10. and 11. Rich. 2. c. 7. and 1. Hen. 4. c. 17. it is enacted, "That all manner of "aliens, being of the amity of the king, coming into any "town of the realm with fiſh, or other victual, ſhall be "under the king's eſpecial protection, and may cut their "fiſhes and victuals in pieces, and in part, or in all, at "retail, or in groſs, as to them beſt ſhall ſeem, to ſell and "make their profit, &c."

Sect. 8. By 14. Hen. 6. c. 6. "If any man diſturb any "alien to ſell his fiſh in groſs, or at retail, in part or in "whole, contrary to the above-mentioned ordinances, and "thereof be duly attainted at the ſuit of the king, or of the "party, he ſhall forfeit ten pounds, &c."

As

As to the third particular, *viz.* The giving the great officers of ſtate a power to tax the price of victuals.

Vide alſo 24. Hen. 8. c. 3. 25. Hen. 8. c. 1. 27. Hen. 8. c. 9. which enjoin that butchers meat ſhall be ſold by the pound, &c. But by 33. Hen. 8. c. 11. it may be ſold by weight or otherwiſe.

Sect. 9. This depends upon 25. Hen. 8. c. 2. by which it is enacted, "That to remedy the frequent riſe of the "price of cheeſe, butter, capons, hens, chickens, and other "neceſſary victuals for man's ſuſtenance, by ingroſſing and "regrating the ſame; the lord chancellor and other high "officers of ſtate, &c. may, upon complaint of any in-"hancing of the prices of ſuch victuals without ground or "reaſonable cauſe, in any part of the king's dominions, "ſet and tax reaſonable prices of ſuch victuals: and that "after proclamation made of ſuch prices, all farmers, "owners, broggers, and all other victuallers whatſoever, "having or keeping any ſuch victuals to the intent to ſell, "ſhall ſell the ſame to ſuch of the king's ſubjects as will "buy them at ſuch prices as ſhall be taxed by ſuch procla-"mation, under the pains to be limited in the ſaid procla-"mation."

Sect. 10. But by 25. Hen. 8. c. 2. "The officers of "cities, boroughs, or towns-corporate, and all other per-"ſons having authority to ſet prices of ſuch victuals, may "ſet ſuch prices in ſuch manner as if the ſaid act had not "been made."

As to the fourth particular, *viz.* The prohibiting conſpiracies to raiſe the price of victuals.

Vide 5. Eliz. c. 4. 12. Mod. 248.

Sect. 11. This depends upon 2. and 3. Edw. 6. c. 15. by which it is enacted, "That if any butchers, brewers, "bakers, poulterers, cooks, coſter-mongers, or fruiterers, "ſhall conſpire, covenant, promiſe, or make any oaths, that "they ſhall not ſell their victuals but at certain prices; or "if any artificers, workmen, or labourers, do conſpire, "covenant, or promiſe together, or make any oaths, that "they ſhall not make or do their works but at a certain "price or rate; or ſhall not enterpriſe, or take upon them "to finiſh what another hath begun, or ſhall do but a "certain work in a day, or ſhall not work but at certain "hours and times; every ſuch perſon ſo conſpiring, &c. "ſhall forfeit for the firſt offence ten pounds; and if he "pay not the ſame within ſix days, ſhall ſuffer twenty days "impriſonment; and for the ſecond offence ſhall forfeit "twenty pounds, &c. and for the third, forty pounds, &c. "And if any ſuch conſpiracy, covenant, or promiſe, be "made by any ſociety, brotherhood, or company, of any "craft, myſtery, or occupation of the victuallers above-"mentioned, with the preſence or conſent of the more part "of

" of them, that then immediately upon ſuch act of conſpi-
" racy, &c. over and beſides the particular puniſhment be-
" fore appointed, their corporation ſhall be diſſolved; and
" that the ſaid offences ſhall be determined at the aſſizes,
" ſeſſions of the peace, or court leet."

† *Sect.* 12. But by 2. Geo. 3. c. 14. " No brewer, inn-
" keeper, victualler, or other retailer of ſtrong beer or ale,
" ſhall be ſued, impleaded, or moleſted by indictment, in-
" formation, popular action or otherwiſe, for advancing
" the price of ſtrong beer or ale in a reaſonable degree."

† *Sect.* 13. And by 2. Geo. 3. c. 14. it is alſo enacted,
" That if any brewer, innkeeper, victualler, or retailer of
" beer or ale, ſhall mix, or cauſe, or ſuffer to be mixed in
" any veſſel, tub, meaſure, or otherwiſe, any ſtrong beer,
" ale, or ſtrong worts, with any ſmall beer or ſmall worts,
" or with water, after the gauge of ſuch ſtrong beer, ale, or
" ſtrong worts, ſhall have been taken by an officer of exciſe,
" he ſhall forfeit fifty pounds."

As to the fifth particular, *viz.* The prohibiting all fore-
ſtalling, ingroſſing, and regrating.

† *Sect.* 14. This depended chiefly upon 3. and 4. Edw. 6.
c. 21. 5. and 6. Edw. 6. c. 14. altered by 5. Eliz. c. 5. ſ. 13.
5. Eliz. c. 12. and 13. Eliz. c. 25. ſ. 31. But it is recited by
12. Geo. 3. c. 71. " That it has been found by experience
" that the reſtraints laid by ſeveral ſtatutes upon the dealing
" in corn; meal, flour, cattle, and ſundry other ſorts of
" victuals, by preventing a free trade in the ſaid commodi-
" ties, have a tendency to diſcourage the growth, and to
" enhance the price of the ſame; which ſtatutes, if put in
" execution, would bring a great diſtreſs upon the inhabi-
" tants of many parts of this kingdom, and in particular
" upon thoſe of the cities of *London* and *Weſtminſter*; and
" thereupon it is enacted, that the 3. and 4. Edw. 6. c. 21.
" the 5. and 6. Edw. 6. c. 14. the 2. and 3. Philip and Mary,
" c. 3. the 5. Eliz. c. 5. and c. 12. the 15. Car. 2. c. 8. and
" ſo much of 5. Ann. c. 34. as relates to butchers ſelling
" cattle alive or dead, within *London* and *Weſtminſter*, and
" within ten miles thereof, and alſo all acts for the better
" inforcement of the ſame, being detrimental to the ſupply
" of the labouring and manufacturing poor of this king-
" dom, ſhall be, and the ſame are hereby declared to be re-
" pealed."

† *Sect.* 15. But as the ſtatute of *Edward the Sixth* particu-
larly deſcribes the ſeveral offences of foreſtalling, ingroſſing, 2. Burn's Juſtice 231.
" and

and regrating, which ſtill continue offences at common law, it may be of uſe to recite it, notwithſtanding it is repealed, as it contains a parliamentary deſcription of thoſe offences.

An indictment on this clauſe muſt charge expreſsly that the goods bought were *coming to the market to be ſold.* 1. Rolle's Rep 421.

† *Sect.* 16. By 5. and 6. Edw. 6. c. 14. ſ. 1. "Whoſoever ſhall buy, or cauſe to be bought, any merchandize, victual, or any other thing whatſoever coming by land or by water toward any market or fair to be ſold in the ſame, or coming toward any city, port, haven, creek, or road. of this realm or *Wales*, from any parts beyond the ſea to be ſold, or make any bargain, contract, or promiſe, for the having or buying of the ſame, or any part thereof ſo coming as is aforeſaid before the ſame ſhall be in the market, fair, city, or port, &c. ready to be ſold, or ſhall make any motion by word, letter, meſſage, or otherwiſe, to any perſon or perſons for the enhancing of the price or dearer ſelling of any thing above-mentioned, or elſe diſſuade, move, or ſtir any one coming to the market or fair to abſtain or forbear to bring or convey any of the things above rehearſed to any market, city, or port, &c. to be ſold, ſhall be deemed—A FORESTALLER."

Vide Owen 135.

† *Sect.* 17. By 5. and 6. Edw. 6. c. 14. ſ. 2. "Whoſoever ſhall by any means regrate, obtain, or get into his hands or poſſeſſion in any fair or market, any corn, wine, fiſh, butter, cheeſe, candles, tallow, ſheep, lambs, calves, ſwine, pigs, geeſe, capons, hens, chickens, pidgeons, conies, or other dead victual whatſoever, that ſhall be brought to any fair or market to be ſold, and do ſell the ſame again in any fair or market holden in the ſame place, or within four miles thereof, ſhall be taken for—A REGRATOR."

† *Sect.* 18. By 5. and 6. Edw. 6. c. 14. ſ. 3. "Whoſoever ſhall ingroſs or get into his hands by buying, contracting, or promiſe-taking, other than by demiſe, grant, or leaſe of land, or tithes, any corn growing in the fields, or any other corn or grain, butter, cheeſe, fiſh, or other dead victual whatſoever, within the realm of *England*, to the intent to ſell the ſame again, ſhall be reputed—AN UNLAWFUL INGROSSER."

In the conſtruction of the laſt-mentioned clauſes the following opinions have been holden.

(*a*) 3. Inſt. 195. Sum. 152. Cro. Car. 231.

Sect. 19. I. That (*a*) ſalt is a victual within the meaning of it, not only becauſe it is of neceſſity of itſelf for the food and health of man, but alſo becauſe it ſeaſoneth and maketh wholeſome beef, pork, and other victuals, in which

which reſpect it ſeemeth itſelf to come under the notion of victual, and ſeemeth to be ſo underſtood by the makers of 13. Eliz. 12. c. 25. as appears from par. 21. of that ſtatute.

Sect. 20. II. That (*a*) ſuch victual only as is neceſſary for the food of man is within the purview of it; and therefore that apples and cherries, and ſuch-like fruits, are not within the intent of it; for the words are, corn or grain, butter, cheeſe, fiſh, or other dead victuals, which words are ſaid to import the ſame as if it had been ſaid, or other dead victuals of like quality: alſo it is ſaid, that there is not any thing prohibited within the ſtatute, but what hath a proviſo, how in ſome kind it might be brought; and therefore ſince there is not any ſuch proviſo for apples, that they never were intended to be reſtrained; and agreeably hereto it hath been holden, that neither (*b*) hops nor (*c*) malt are within the meaning of the ſtatute.

Con. Ow. 135.

(*a*) 3. Inſt. 195. Sum. 152. Cro. Car. 231. Owen 135. Cro. Jac. 214.

(*b*) Cro. Car. 231.

(*c*) 3. Inſt. 196. 1. Roll. 12.

Sect. 21. III. That the buying of corn, with an intent to make (*d*) ſtarch of it, and then to ſell it, is not within the ſaid clauſe, becauſe it is not bought to be ſold again in the ſame nature in which it was bought, but to be firſt altered by a trade or ſcience, and then ſold again. And for the like reaſon it ſeemeth to be the better (*e*) opinion, that the buying of corn in order to make meal of it, and then to ſell it, is no way within the ſaid clauſe; and that the buying of (*f*) barley with an intent to make it into malt, and then to ſell it, had no need of the exception made for it in the ſaid ſtatute.

(*d*) Bridg. 5, 6. Owen 135.

(*e*) Moore 595. Cro. Car. 231. Con. Ow. 135.

(*f*) C. Car. 231. 3. Inſt. 196. See c. 33. ſ. 15. 18. Con. Ow. 135.

Sect. 22. IV. That there is no neceſſity in an information or indictment grounded on the ſaid clauſe for ingroſſing any victual therein mentioned, to ſay (*g*) that the defendant did not come by it by a demiſe of land, &c. but that the defendant, if he have any ſuch matter to alledge in his defence, may give it in evidence.

(*g*) 1. Jon. 137.

Sect. 23. V. That in every ſuch information, &c. the words of the ſtatute muſt be preciſely purſued, and therefore that it is not ſufficient to ſay, that the defendant bought ſo much corn, &c. becauſe the words are, "ſhall "ingroſs, or get into his hands, by buying, &c."

2. Leon. 35.

Sect. 24. And it is further enacted by the ſaid ſtatute of 5. and 6. Edw. 6. c. 14. par. 4, 5, 6. "That whoever ſhall "offend in any of the things before recited, and be thereof "duly convicted, ſhall for the firſt offence ſuffer impriſon-"ment for two months, and forfeit the value of the goods "ſo by him bought or had; and for the ſecond offence

" ſhall ſuffer impriſonment for one half year, and forfeit " the double value of the goods, &c. and for the third " offence ſhall be ſet on the pillory, and forfeit all his " goods, and be committed to priſon during the king's " pleaſure."

2. Ruſſ. 317. Cro. Car. 381. 6. Modern 32. Vide alſo Cro. Car. 314. 1. Roll. 11, 12. 3. Jones 320.

Sect. 25. And from hence it ſeems clearly to follow, as well as from the general rules of law, that no information for any of the above-mentioned offences againſt the ſaid ſtatute, can be good, without ſhewing in certain the quantity of the thing in relation to which the defendant is ſuppoſed to have incurred the penalty, not only becauſe otherwiſe the judgment to be given on ſuch an information can never be pleaded in bar of any other, becauſe it cannot appear that both of them were brought for the ſame thing, but alſo becauſe it cannot appear to the Court what forfeiture the defendant ought to incur, unleſs the extent of the offence, which is to be the meaſure of it, be ſpecially ſet forth. And for theſe reaſons it hath been adjudged, that an information for ingroſſing corn, the quantity whereof is expreſſed by the word " *cumulus*" only, is not good; yet it is ſaid, that an indictment for ingroſſing *magnam quantitatem frumenti* is ſufficient.

CHAP.

CHAPTER THE EIGHTIETH,

CONTINUED.

OF REGULATING THE PRICE OF VICTUALS, &c.

THE ſtatutes againſt the offences of foreſtalling, ingroſſing, and regrating, contained particular exceptions to the general reſtraints which they impoſed. Theſe exceptions related to corn, butter, cheeſe, cattle, beer, cyder, mum, fiſh, wine, oil, ſugar, ſalt, fiſhmongers, victuallers, butchers, poulterers, badgers, drovers, leſſors, ſhipping, and caſtles and towns-corporate. Of the foregoing catalogue thoſe exceptions which relate to fiſh, fiſhmongers, victuallers, butchers, poulterers, leſſors, ſhipping and caſtles, and towns-corporate, are repealed. But as the intention of the legiſlature both in enacting and in repealing theſe ſtatutes, in accommodation to the emergencies of different periods of time, was to regulate the price of victuals, and to prevent them from being exorbitantly raiſed upon, or improperly introduced to the publick, by the reſpective dealers therein; I ſhall endeavour to collect the ſeveral ſtatutes which relate to the regulation under the following arrangement.

1. As to The meaſure of corn.
2. As to Bread.
3. As to Beer.
4. As to Butter and Cheeſe.
5. As to Cattle and Butchers.
6. As to Fiſh.
7. As to Bacon and Pork.
8. As to Hay and Straw.
9. As to Fruit.

10. As to Honey and Wax.

11. As to The meaſure of Coals.

N. B. For the regulation of wood cut up for fuel vide 43. Eliz. c. 14. 9. Ann. c. 15. and 10. Ann. c. 6.

AND FIRST, As to the meaſure of corn.

† *Sect.* 1. By 22. Car. 2. c. 8. ſ. 2. "Whoever ſhall ſell "any ſort of corn or grain, ground or unground, or any "kind of ſalt, uſually ſold by the buſhel, by any other "than by *Wincheſter meaſure*, marked in his majeſty's ex- "chequer, and ſealed as the act directs, containing eight "gallons to the buſhel, and no more or leſs, and the ſaid "buſhel ſtricken even by the wood or brim of the ſame by "the ſeller, ſhall forfeit forty ſhillings for every offence, on "conviction, before one juſtice, by one witneſs; to be "levied by the churchwardens, &c. by diſtreſs and ſale; "and in default, impriſonment till paid."

† *Sect.* 2. By 22. Car. 2. c. 8. ſ. 3. "If any mayor or "other head officer ſhall knowingly permit the ſame, on "conviction at the ſeſſions, he ſhall forfeit five pounds, "half to the proſecutor, and half to the poor by diſtreſs, or "impriſonment till paid."

† *Sect.* 3. By 22. and 23. Car. 2. c. 12. "Whoever ſhall "ſell or buy any corn ground or unground, or ſalt by the "bag without meaſuring, being thereunto required, or in "any other manner than as above directed, and that with- "out ſhaking of the ſaid buſhel or meaſure by the buyer, "ſhall forfeit beſide the above penalty, all the corn, grain, "or ſalt bought or ſold contrary to this act, or the value "thereof, to the party complaining."

† *Sect.* 4. By 22 and 23. Car. 2. c. 12. "The proof "ſhall lie upon the defendant to make it appear by the oath "of one witneſs that he ſold or bought the ſame lawfully, "or, if he fail, he ſhall forfeit as before mentioned, and "which ſhall be diſtributed by the juſtice, half to the poor "and half to the informer."

Rex v. Major, 4. Term Rep. 350.

† *Sect.* 5. It has been decided, that the object of the legiſ- lature in paſſing the above ſtatutes was to eſtabliſh throughout the kingdom one meaſure only, and therefore that they virtu- ally aboliſh the uſe of thoſe *cuſtomary meaſures* which were uſed in

in particular places; and that it is illegal to ſell corn by any other meaſure than the *Wincheſter meaſure.*

For the mode by which the averaged price of corn is to be aſcertained, vide 10. Geo. 3. c. 39. and for the ſame in London and Eſſex, 21. Geo. 3. c. 50. For regulations reſpecting its importation, 22. Car. 2. c. 13. 15. Car. 2. c. 7. 5. Geo. 2. c. 12. 6. Geo. 3. c. 17. 13. Geo. 3. c. 43. 16. Geo. 3. c. 29. 18. Geo. 3. c. 25. 19. Geo. 3. c. 29. For regulating its exportation, vide 1. W. and M. c. 12. 1. Geo. c. 7. 11. Geo. 2. c. 22. 13. Geo. 3. c. 43. ſ. 5. 14. Geo. 3. c. 64. 14. Geo. 3. c. 5. and 31. and 26. 16. Geo. 3. c. 37. 18. Geo. 3. c. 16.

SECONDLY, As to Bread, I ſhall conſider the ſeveral ſtatutes as they relate,

1. To the aſſize and making of wheaten and houſhold bread.

2. As to the making bread when no aſſize is ſet.

3. As to the making of ſtandard wheaten bread.

As to the firſt particular, *viz.* The aſſize and making of wheaten bread.

† *Sect.* 6. By 31. Geo. 2. c. 29. ſ 2. "The Court, or "perſons herein authorized to ſet the aſſize and weight of "bread, and the price for the ſame, ſhall ſo do as often as "they ſhall think proper; and that in every aſſize, reſpect "ſhall be had to the price which the grain, meal, or flour, "ſhall bear in the public markets, in or near the place for "which ſuch aſſize ſhall be ſet; making reaſonable allow-"ance to makers for their charges and profit."

† *Sect.* 7. By 31. Geo. 2. c. 29. ſ. 3. "Where an aſſize "ſhall be ſet, no perſon ſhall there ſell bread, except "wheaten and houſhold, otherwiſe brown bread, and ſuch "other ſort as ſhall be publicly allowed by the Court, or "perſons aforeſaid; but where it hath been uſual to make "bread with the meal of rye, barley, oats, beans, or peaſe, "or with the meal of any ſuch different ſorts of grain mixed "together, or the Court or perſons ſhall allow ſuch bread "to be made, ſuch bread ſhall and may be there made and "ſold; and offenders on conviction by confeſſion, or the "oath of one witneſs, before any magiſtrate within his "juriſdiction, ſhall forfeit not exceeding forty nor leſs than "twenty ſhillings."

An aſſize ſet, no other ſort of bread (wheaten and houſhold excepted) to be made for ſale, under penalty of forfeiting not exceeding forty ſhillings, nor leſs than twenty ſhillings.

† *Sect.* 8 By 31. Geo. 2. c. 29. ſ. 4. "The aſſize and "weight of the ſeveral ſorts of bread for ſale, and the price,

Aſſize and price to be according to the Tables.

" ſhall be ſet and aſcertained according to the following " tables marked No. I. and 2."

N. B. Part the firſt, or the aſſize table, contains the price of the buſhel of wheat Wincheſter meaſure, from 2s 9d, to 14s. 6d. the buſhel, the allowance of the magiſtrates or juſtices to the baker for baking being included: ſo that (for example) if the price of wheat in the market is 5s. the buſhel, and the magiſtrates allow 1s. 6d. the buſhel to the baker for baking, find 6s. 6d., and even therewith will be found the weights of the ſeveral loaves; but if the price in the market is 3s., and the allowance 1s., then the weight of the loaves will be found even with 4s.

N. B. Part the ſecond, or the priced table, contains the price of the buſhel of wheat, Wincheſter meaſure, from 2s. 9d. to 14s. 6d. the buſhel, the allowance for baking being included; and alſo the prices of the peck, half peck, and quartern, wheaten and houſhold loaves: ſo that (for example) if the price of wheat in the market is 5s. the buſhel, and the magiſtrates allow 1s. 6d. for baking, find 6s. 6d., and even therewith will be found the prices of the ſeveral loaves.

It was thought ſufficient to inſert the weight of a penny-loaf, as the weight of all other loaves may thereby be eaſily calculated.

TABLE. No. I.

OF BREAD MADE OF WHEAT.

Price of the buſhel of wheat & baking.		Weight.				Prized Bread.											
		The penny loaf.				Quartern loaf.				Halfpeck loaf.				Peck loaf.			
		Wheaten.		Houſhold		Wheaten		Houſhold		Wheaten.		Houſhold		Wheaten.		Houſhold.	
s.	d.	oz.	dr.	oz.	dr.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
2	9	22	4	19	4	0	3¼	0	2¼	0	6¼	0	4¾	1	0½	0	9½
3	0	20	4	27	1	0	3½	0	2½	0	7	0	5¼	1	1¾	0	10¼
3	3	18	9	25	4	0	3¾	0	2¾	0	7½	0	5½	1	3	0	11
3	6	17	6	23	3	0	4	0	3	0	8	0	6	1	4	1	0
3	9	16	6	21	6	0	4¼	0	3¼	0	8½	0	6½	1	5	1	1
4	0	15	4	20	4	0	4½	0	3½	0	9	0	6¾	1	6¼	1	1¾
4	3	14	4	19	1	0	4¾	0	3¾	0	9¾	0	7¼	1	7½	1	2½
4	6	13	9	17	15	0	5	0	3¾	0	10¼	0	7¾	1	8½	1	3½
4	9	12	12	17	1	0	5½	0	4	0	10¼	0	8	1	9¾	1	4¼
5	0	2	1	16	6	0	5¾	0	4¼	0	11½	0	8½	1	11	1	5
5	3	11	9	15	7	0	6	0	4½	1	0	0	9	2	0	1	6
5	6	11	2	14	10	0	6¼	0	4¾	1	0½	0	9½	7	1	1	7

Price

Price of the bushel of wheat and baking.		Weight. The penny loaf.				Prized Bread. Quartern loaf.				Half peck.				Peck loaf.			
		Wheaten.		Houſhold		Wheaten.		Houſhold		Wheaten.		Houſhold		Wheaten.		Houſhold	
s.	d.	oz.	dr.	oz.	dr.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
5	9	10	8	14	4	0	6½	0	5	1	1¼	0	9¾	2	2½	1	7½
6	0	10	2	13	9	0	7	0	5	1	1¾	0	10¼	2	3½	1	8½
6	3	9	11	13	1	0	7¼	0	5½	1	1¼	0	10¾	2	4¾	1	9¼
6	6	9	4	12	10	0	7½	0	5½	1	3	0	11	2	6	1	10
6	9	9	0	12	1	0	7¾	0	5¾	1	3½	0	11½	2	7	1	11
7	0	8	11	11	9	0	8	0	6	1	4	1	0	2	8	2	0
7	3	8	7	11	2	0	8¼	0	6¼	1	4	1	0½	2	9	2	1
7	6	8	3	10	11	0	8½	0	6½	1	5½	1	1	2	10	2	2
7	9	7	14	10	6	0	8¾	0	6¾	1	5	1	1½	2	11¼	2	2¾
8	0	7	10	10	2	0	9¼	0	6¾	1	6¾	1	1¾	3	0½	2	3½
8	3	7	5	9	15	0	9½	0	7	1	7	1	2	3	2	2	4
8	6	7	2	9	9	0	9¾	0	7¼	1	7½	1	2½	3	3	2	5
8	9	6	15	9	4	0	10	0	7½	1	8	1	3	3	4	2	6
9	0	6	13	8	15	0	10¼	0	7¾	1	8½	1	3½	3	5	2	7
9	3	6	9	8	12	0	10¼	0	8	1	9	1	3¾	3	6¼	2	7¾
9	6	6	7	8	8	0	10¾	0	8¼	1	9¾	1	4¼	3	7¼	2	8¾
9	9	6	4	8	5	0	11	0	8¼	1	10¼	1	4¾	3	8½	2	9½
10	0	6	1	8	2	0	11½	0	8½	1	11	1	5	3	10	2	10
10	3	5	15	7	15	0	11¾	0	8¾	1	11½	1	5½	3	11	2	11
10	6	5	13	7	12	1	0	0	9	2	0	1	6	4	0	3	0
10	9	5	11	7	9	1	0¼	0	9¼	2	0½	1	6½	4	1	3	1
11	0	5	9	7	5	1	0½	0	9	2	1	1	7	4	2	3	2
11	3	5	6	7	3	1	0¾	0	9¼	2	1¾	1	7	4	3¼	3	2¾
11	6	5	5	7	1	1	1	0	10	2	2	1	7	4	4½	3	3½
11	9	5	2	6	15	1	1½	0	10	2	3	1	8	4	5	3	4
12	0	5	1	6	13	1	1¾	0	10¼	2	3½	1	8½	4	7	3	5
12	3	4	15	6	10	1	2	0	10½	2	4	1	9	4	8	3	6
12	6	4	14	6	8	1	2¼	0	10¾	2	4½	1	9½	4	9	3	7
12	9	4	13	6	5	1	2½	0	11	2	5	1	10	4	10	3	8
13	0	4	11	6	4	1	3	0	11¼	2	5¾	1	10¼	4	11½	3	8½
13	3	4	9	6	3	1	3¼	0	11¼	2	6½	1	10½	5	1	3	9
13	6	4	8	6	1	1	3½	0	11½	2	7	1	11	5	2	3	0
13	9	4	7	5	15	1	3¾	0	11¾	2	7½	1	11½	5	3	3	11
14	0	4	5	5	13	1	4	1	0	2	8	2	0	5	4	4	0
14	3	4	4	5	11	1	4	1	0¼	2	8½	2	0½	5	5	4	1
14	6	4	3	5	9	1	5	1	0½	2	9	2	1	5	6	4	2

Note, The wheaten loaves are three-fourths of the weight of the houſhold loaves; and if the magiſtrates or juſtices ſhall think fit to allow of any white loaves of the price of one penny or two-pence, they are to weigh at all times three-fourths of the weight of the wheaten loaves of the ſame price.

Note, The prices of the houſhold loaves are always three-fourths of the prices of the wheaten loaves; and where it ſhall be thought proper to allow of half quartern loaves, the prices of ſuch loaves (if ſold ſingly) are to be half a farthing higher than is allowed by this Table, when it ſhall ſo happen that the farthing is ſplit.

And magiſtrates and juſtices within their reſpective juriſdictions being to ſet the aſſize and fix the price of the ſeveral loaves of bread having reſpect to the price which the grain, meal, or flour ſhall bear in the markets, but no proviſion being made, how they ſhould know what price the reſpective ſorts of meal and flour ſhould be eſteemed to bear in proportion to the price of wheat, they are therefore to take notice that the peck loaf of each ſort of bread is to weigh, when well baken, ſeventeen pounds ſix ounces avoirdupois, and the reſt in proportion; and every ſack of meal or flour is to weigh two hundred weight two quarters nett; from every ſack of meal or flour there ought to be produced, on the average, twenty ſuch peck loaves of bread; and by obſerving the ſaid rule, magiſtrates and juſtices may at all times know if the baker had more or leſs than the allowance they intend to give him.

TABLE

TABLE II.

OF BREAD MADE OF SEVERAL GRAINS.

The firſt column contains the prices of the buſhel of grain, baking included; which prices are adapted ſo as to ſerve either for the Winchester buſhel of rye, of barley, of oats, of beans, of maſlin *alias* miſcellany, conſiſting of two-thirds wheat and one-third rye; the price of either of which buſhels in the market being known, the magiſtrates are to add the intended allowance thereto; the amount of which being found in column No. 1. the weight which the ſeveral loaves ought to be of, will be found under column No. 2. and the price of the reſpective peck loaves (which are to weigh 17lb. 6 oz. each) under No. 1.

Note, Where bread is allowed at any time to be made for ſale of peaſe only, the aſſize and price thereof are to be ſet and fixed from the bean columns; and where bread is ordered to be made for ſale of a coarſe ſort of maſlin or miſcellany grain, conſiſting of one-third rye, one-third barley, and one-third either peaſe or beans, the aſſize and price thereof are to be ſet and fixed from the barley columns.

Note alſo, That this Table is framed for bread to be made of the whole produce of the ſaid ſeveral grains, except the bran or hull thereof only.

No. 1.		No. 2.										No. 3.									
Price of the buſhel and baking.		Weight of the penny loaf.										Price of the peck loaf.									
		Rye.		Barley.		Oats.		Beans.		Maſlin.		Rye.		Barley.		Oats.		Beans.		Maſlin.	
s.	d.	oz.	dr.	oz.	dr.	oz.	dr.	oz.	dr.	oz.	dr.	s.	d.	s.	d.	s.	d.	s.	d.	s.	d.
1	0	62	8	67	8	31	4	83	12	70	0	0	4½	0	4½	0	9	0	3¾	0	4
1	3	50	0	54	0	25	0	67	0	56	0	0	5½	0	5¼	0	11	0	4	0	5
1	6	41	10	45	0	24	14	55	12	46	10	0	6½	0	6¼	1	1¼	0	5	0	6
1	9	35	11	38	9	17	14	47	14	40	0	0	7¼	0	7¼	1	3¾	0	5¾	0	7
2	0	31	4	33	12	15	10	41	14	35	0	0	8¾	0	8¼	1	5¾	0	6¾	0	8
2	3	27	13	30	0	13	14	37	4	31	2	0	10	0	9¼	1	7¼	0	7½	0	9
2	6	25	0	27	0	12	8	33	8	28	0	0	11	0	10½	1	10	0	8¾	0	10
2	9	22	11	24	9	11	6	30	7	25	6	1	0	0	11¼	2	1	0	9¾	0	11
3	0	20	13	22	8	10	7	27	14	23	5	1	1	1	0½	2	2½	0	10	1	0
3	3	19	4	20	12	9	10	25	12	21	8	1	2¼	1	1½	2	4¼	0	10¾	1	1
3	6	17	13	19	4	8	15	23	15	20	0	1	3¼	1	2¾	2	6¼	0	11¾	1	2
3	9	16	11	18	0	8	5	22	5	18	10	1	4½	1	3¾	2	8¾	1	0½	1	3
4	0	15	10	16	14	7	13	20	15	17	8	1	5¾	1	4¾	2	11¾	1	1	1	4
4	3	14	12	15	14	7	6	19	11	16	8	1	6¾	1	5¼	3	0¾	1	2¼	1	5
4	6	13	14	15	0	6	15	18	10	15	9	1	8	1	7	3	2½	1	3¼	1	6
4	9	13	2	14	4	6	9	17	11	14	12	1	8	1	8	3	5	1	3¾	1	7
5	0	12	8	13	8	6	4	16	12	14	0	1	10	1	9	3	8	1	4¾	1	8
5	3	11	14	12	14	5	15	15	15	13	5	1	11¼	1	0	3	11	1	5¾	1	9
5	6	11	5	12	4	5	11	15	3	12	11	2	0½	1	11	4	1	1	7½	1	10
5	9	10	13	11	12	5	7	14	9	12	2	2	1	2	0	4	3	1	7¾	1	11
6	0	10	6	11	4	5	3	13	15	11	10	2	2¾	2	1	4	5	1	8	2	0
6	3	10	0	10	13	5	0	13	6	11	3	2	3¾	2	2	4	7¾	1	8¾	2	1
6	6	9	10	10	6	4	13	12	14	10	12	2	5	2	3	4	9	1	9½	2	2
6	9	9	4	10	0	4	10	12	6	10	6	2	6	2	4	5	0	1	10¼	2	3
7	0	8	15	9	10	4	7	11	15	10	0	2	7	2	5	5	1½	1	11¼	2	4

† Sect.

Aſſize to be ſet in averdupoize weight, directed by the tables.

† *Sect.* 9. By 31. Geo. 2. c. 29. ſ. 5. "Every aſſize ſhall "be ſet in averdupoize weight, of ſixteen ounces to the "pound, and not troy weight, and in the ſeveral propor- "tions directed by the Tables, or as near as may be: and "the ſaid Tables ſhall extend as well to bread made with "wheat mixed with other grain, as to bread made with "other grains than wheat, publicly licenſed to be made into "bread; and the aſſize of all ſuch mixed bread ſhall be "ſet and aſcertained as near as may be to the ſaid Tables."

Return to be made weekly to the court of aldermen of *London*, of the prices which the grain fell for, to be entered in a book in the town clerk's office; the aſſize to continue till a new aſſize be ſet.

† *Sect.* 10. By 31. Geo. 2. c. 29. ſ. 6. "The prices which "the ſeveral kinds of grain, meal, and flour, ſhall, *bona fide*, "ſell for in *London*, in open and public market, ſhall be cer- "tified on oath, on ſome certain day in every week, as the "mayor and aldermen ſhall appoint, by the meal weighers "of *London*, or ſuch perſons as the ſaid court ſhall direct; "and ſhall alſo on ſome certain day in every week, to be "appointed by the ſaid court, be entered by ſuch perſons in "writing, and kept at the town clerk's office in the ſaid "city: and the next day after every ſuch price ſhall be ſo "certified, the aſſize and weight of all ſorts of bread to be "ſold within the limits of their juriſdiction, and the price "to be paid for the ſame, ſhall be ſet by the ſaid court of "mayor and aldermen, if the ſaid court ſhall then ſit, and "if not, then by the mayor of the ſaid city; and that the "aſſize ſo ſet in *London* ſhall take place as the ſaid court ſhall "order, and be in force for *London* and the liberties thereof, "and the weekly bills of mortality (the city of *Weſtminſter* "and liberties thereof, the borough of *Southwark*, and "weekly bills of mortality in the county of *Surrey* ex- "cepted), until another aſſize in *London* ſhall be ſet; and "that the aſſize ſo ſet, ſhall with all convenient ſpeed be "made public in ſuch manner as the ſaid court of mayor "and aldermen ſhall direct: but before any advance or re- "duction ſhall in any week be made by the ſaid court or the "mayor in the price of bread, the meal weighers or other "perſons ſhall leave in writing at the common hall of the "*Company of Bakers* in *London*, a copy of every return of the "price of grain, meal, and flour, which they ſhall make "and enter in ſuch book as aforeſaid, ſome time of the ſame "day on which ſuch meal weighers or other perſons ſhall "make every ſuch return and entry; to the intent that the "ſaid *Company of Bakers* may the morning of the next day "after every ſuch return and entry made, and before any "aſſize ſhall be ſet, have an opportunity to offer to the "mayor and aldermen, and if ſuch court ſhall then ſit, to "the mayor, all ſuch objections as the ſaid *Company of* "*Bakers* ſhall think fit againſt any advance or reduction "being that day made."

The meal-weighers are to leave at the Bakers Hall a copy of the returns.

† *Sect.*

† *Sect.* 11. By 31. Geo. 2. c. 29. ſ. 7. "The court of "mayor and aldermen of every other city, and where there "ſhall be no ſuch court, or when the ſame ſhall not ſit, the "chief magiſtrate of every other city; and in towns corpo- "rate, or boroughs, the mayor, bailiffs, aldermen, or other "chief magiſtrate, or two juſtices where there ſhall be no "ſuch mayor, bailiffs, aldermen, or chief magiſtrates; ſhall "ſeverally and reſpectively cauſe the reſpective prices which "the ſeveral ſorts of grain, meal, and flour, proper to make "bread allowed to be made in every ſuch other city, town "corporate, borough, town, or place, ſhall, *bonâ fide*, ſell "for, in the reſpective public markets in or near to every "ſuch other place, to be certified upon oath, unto ſuch "magiſtrates as aforeſaid, in ſuch manner in every week, "as any ſuch reſpective court or magiſtrates ſhall appoint; "and the price ſo certified ſhall be entered by the perſon "who ſhall certify the ſame in ſome book kept by him for "that purpoſe; and within two days after the aſſize and "weight of bread ſhall be ſet by the perſons and in the ju- "riſdictions as aforeſaid reſpectively, the ſame ſhall take "place on ſuch day in every week, and be in force for ſuch "time, not exceeding ſeven days from the ſetting of every "ſuch aſſize, and ſhall be made public in ſuch manner as "ſuch magiſtrates as aforeſaid ſhall within their reſpective "juriſdictions direct."

The court and magiſtrates, &c. in other cities, towns, and boroughs, may cauſe returns to be made; the prices to be entered and certified; the aſſize to be ſet within two days after; and to continue (not exceeding ſeven days).

† *Sect.* 12. By 31. Geo. 2. c. 29. ſ. 8. "If any two juſ- "tices of counties ſhall ſet an aſſize, it ſhall be lawful for "them to cauſe the price which grain, meal, and flour, fit "to make bread, ſhall, *bonâ fide*, ſell for in the reſpective "public corn-markets, in or near the place or places re- "ſpectively, to be certified on oath (*a*) to them at their re- "ſpective places of abode, in any ſuch county, on ſuch day "in every week as they ſhall appoint, by the reſpective clerks "of the market, or ſuch other perſon as any ſuch two juſ- "tices ſhall appoint; and that the price of grain, meal, and "flour, ſo returned, ſhall be entered by the perſon who ſhall "return the ſame in ſome book kept by him for that pur- "poſe; and within two days after the price and aſſize of "bread may be by any two juſtices ſet for any time not ex- "ceeding fourteen days from every ſetting thereof; and the "aſſize which ſhall be ſo ſet, ſhall commence and be in force "at ſuch time, and be made public (*b*) in ſuch place or "places, for which the ſame ſhall be ſo ſet, as the ſaid juſ- "tices ſhall direct."

Two or more juſtices may ſet an aſſize and cauſe returns to be made.

(*a*) For the form of the certificate, which muſt be ſigned with the name of the perſon who returns it, vide the act, ſect. 11. and 1. Burn. 243.

(*b*) For the form of the publication, vide the act, ſect. 12. and 1. Burn. 244.

† *Sect.* 13. By 31. Geo. 2. c. 29. ſ. 9. "Any baker ſhall "have liberty, the day after every return ſhall be made and "entered

Bakers may ſee the returns that they may object to the aſſize.

" entered in the book, to ſee the entry without paying any " thing, to the intent that he may have an opportunity on " the ſaid next day to offer to any ſuch court, mayor, bai- " liffs, aldermen, or other chief magiſtrate or magiſtrates or " juſtices as aforeſaid, before any ſuch aſſize ſhall be ſet, " ſuch objections as any ſuch baker can reaſonably make " againſt any advance or reduction being made."

Not liable to fees.

† *Sect.* 14. By 31. Geo. 2. c. 29. ſ. 10. " No maker of " bread for ſale ſhall pay any fee or reward for any aſſize of " bread being ſet, altered, or publiſhed."

Half peck and quarrern loaves to weigh, and be ſold, in due proportion to the peck loaf.

† *Sect.* 15. By 31. Geo. 2. c. 29. ſ. 11. " The half peck " and quarter of a peck loaves of wheaten and houſehold " bread are to weigh in proportion to the weight a peck loaf " of wheaten or houſehold bread ought to weigh, and are " to be ſold according to the price a peck loaf of wheaten or " houſehold bread reſpectively is to be ſold; and whenever " any bread ſhall be ordered to be made with the meal or " flour of rye, barley, oats, peas, or beans, either alone or " mixed, the aſſize of ſuch bread ſhall be made public in " ſuch manner as the ſaid magiſtrate, who ſhall ſet ſuch aſ- " ſize, ſhall direct."

Where bread of a certain denomination and value ſhall be ordered.

† *Sect.* 16. By 31. Geo. 2. c. 29. ſ. 13. " In places where " any ſixpenny, twelvepenny, and eighteenpenny loaves ſhall " be allowed, no peck, half peck, or quarter of a peck loaves " ſhall be permitted at the ſame time to be there made or " ſold, upon pain of any ſum not exceeding forty nor leſs " than twenty ſhillings."

Seſſions may fix the juriſdiction of any place within a certain diſtrict.

† *Sect.* 17. By 31. Geo. 2. c. 29. ſ. 14. " If the juſtices " of any county or diviſion ſhall, at ſeſſions, think fit to fix, " that any hundred or other place in ſuch county or diviſion " ought to be conſidered as in any one particular hundred, " riding, or diviſion of ſuch county, riding, or diviſion, in " order that the aſſize of bread for ſuch particular hundred " or place may extend to or comprize ſuch other hundred " or place, it ſhall be lawful for them ſo to do; but by ſo " doing no juſtice ſhall be excluded from acting as a juſtice " in any hundred, riding, or diviſion of any ſuch county in " which any ſuch particular towns, diſtricts, or places ſhall " lie, or the aſſize for them ſhall be ſet."

Entry to be made by every clerk of the market, &c.

† *Sect.* 18. By 31. Geo. 2. c. 29. ſ. 15. " An entry ſhall " be made by every clerk of the market, or other perſon, of " every return, and of the rate at which the price, aſſize, and " weight of bread ſhall be ſet or fixed within the juriſdiction " of every ſuch clerk of the market, or other perſons, which " any inhabitant ſhall inſpect without fee."

† *Sect.*

† *Sect.* 19. By 31. Geo. 2. c. 29. ſ. 16. "After an aſſize "ſhall be ſet, no alteration ſhall be made therein in any "ſubſequent week, either to riſe the ſame higher, or to ſink "the ſame lower, unleſs the price of wheat or other grain "ſhall be returned as having roſe three-pence each buſhel "more than the laſt return made, or having fallen three-"pence each buſhel lower than the ſaid laſt return; no pro-"viſion being made by the ſaid aſſize-tables for altering any "aſſize upon ſuch an event." No alteration, unleſs price of grain ſhall vary 3d. in the buſhel from the laſt return.

† *Sect.* 20. By 31. Geo. 2. c. 29. ſ. 17. "If any perſon "appointed to certify or return the price of grain, meal, "and flour, ſhall neglect any matters required to be done "by him, or ſhall deſignedly make any falſe certificate or "return; or if any peace-officer ſhall neglect to obey any "warrant in writing delivered to him under the hand and "ſeal of any magiſtrate, or to do any other act requiſite to "be done by him, ſhall forfeit not exceeding five pounds, "nor leſs than twenty ſhillings." Forfeiture of any meal-weigher, clerk, &c. who ſhall neglect his duty, and any peace-officer who ſhall diſobey.

† *Sect.* 21. By 31. Geo. 2. c. 29. ſ. 18. "In caſe any "dealers in corn, grain, meal, or flour, on reaſonable re-"queſt by the meal-weighers of *London*, or by the clerks of "the markets, or other perſons appointed to give in and "certify the prices of grain, meal, and flour, ſhall refuſe to "make known the true real prices the ſeveral ſorts of grain, "meal, and flour, ſhall be, *bonâ fide*, bought at, or ſold, by "or for him, her, or them reſpectively, at any corn-market "within the juriſdiction of any ſuch perſons aforeſaid, or "ſhall knowingly give in any falſe or untrue price of any "grain, meal, or flour, bought or ſold, or agreed ſo to be, "or any price which hath been made by any deceitful means, "on being convicted by the oath of one witneſs, or ſolemn "affirmation, or on confeſſion, ſhall forfeit not exceeding "ten pounds, nor leſs than forty ſhillings." Penalty for refuſing to diſcloſe the true prices of grain, meal, and flour, or for giving in a falſe or colluſive price.

† *Sect.* 22. By 31. Geo. 2. c. 29. ſ. 19. "If any ſuch "court, magiſtrate, or juſtices, as aforeſaid, who ſhall have "ordered any return, ſhall, within three days after ſuch re-"turn made, ſuſpect that the ſame was not truly and *bonâ fide* "made, it ſhall be lawful to ſummon before them reſpec-"tively any perſon who ſhall have bought or ſold, or ſhall "be ſuſpected to have bought or ſold, or agreed to buy or "ſell, any grain, meal, or flour, or who ſhall be thought "to be likely to give any information concerning the pre-"miſes, and to examine them reſpectively upon their ſeveral "oaths touching the rates and prices the ſeveral ſorts of "grain, meal, and flour, or any of them, were there really "and *bonâ fide* bought at or ſold for, or agreed ſo to be by "him, What ſhall be done where any falſe return ſhall be ſuſpected.

" him, her, or them reſpectively, at any time within ſeven " days preceding the ſummoning: and if any perſon ſo " ſummoned ſhall neglect to appear (and proof be made on " oath of ſuch ſummons having been duly ſerved), or if any " perſon ſo ſummoned ſhall appear, and neglect or refuſe " to anſwer lawful queſtions, on being convicted by the " oath of one witneſs, or confeſſion, before any ſuch court, " magiſtrate, or juſtices, ſhall forfeit not exceeding ten " pounds, and not leſs than forty ſhillings: and if any per- " ſon, ſo examined on oath, ſhall forſwear himſelf, ſuch per- " ſon ſhall be liable to be proſecuted as for perjury, by in- " dictment or information, provided that the party ſo ſum- " moned be not obliged to travel above five miles from the " place of his abode."

Party not obliged to travel above five miles.

† *Sect.* 23. By 31. Geo. 2. c. 29. ſ. 20. " Whenever any " court as aforeſaid, magiſtrate, or juſtices, ſhall order any " bread to be made with the meal of any other grain than " wheat, or to be mixed with wheat, or to be made with " the meal of any other ſort of grain, either ſeparate or " mixed together, all perſons ſhall make bread for ſale with " ſuch mixed meal, or of ſuch weight and goodneſs, and " ſhall ſell the ſame at ſuch prices, as ſuch court, magiſtrates, " or juſtices, ſhall direct, upon pain of any ſum not ex- " ceeding five pounds, nor leſs than forty ſhillings."

Bakers to make the bread of ſuch weight, goodneſs, and price, as ſhall be directed.

† *Sect.* 24. By 31. Geo. 2. c. 29. ſ. 21. " The ſeveral " ſorts of bread ſhall be well made, according to the good- " neſs of the ſeveral ſorts of meal whereof the ſame ought " to be made; and no allum, or any mixture or in- " gredient whatſoever (except only the genuine meal, com- " mon ſalt, pure water, eggs, milk, yeaſt, and barm, or " ſuch leaven as ſhall be allowed by the court or perſon who " ſhall have ſet an aſſize of bread where any ſuch leaven " ſhall be uſed; and where no ſuch aſſize ſhall have been " ſet, then ſuch leaven as any magiſtrate or juſtice ſhall al- " low), ſhall be uſed in making dough or any bread to " be ſold, upon pain that every perſon (other than a ſervant " or journeyman) who ſhall knowingly offend, and be con- " victed by confeſſion, or by oath of one witneſs, before " any ſuch magiſtrate or juſtice, ſhall forfeit not exceeding " ten pounds, and not leſs than forty ſhillings, or ſhall be " committed to the houſe of correction, or ſome priſon of " the county or place where the offence ſhall be, to hard la- " bour, not exceeding one calendar month, nor leſs than " ten days. And if any ſervant ſhall offend, he ſhall forfeit " not exceeding five pounds, and not leſs than twenty ſhil- " lings, or be apprehended and committed as aforeſaid; and " it ſhall be lawful for the magiſtrate or juſtice before whom " any

No adulteration or mixture, except the genuine meal or flour, ſalt, water, eggs, milk, yeaſt, and barm, or ſuch leaven as ſhall be occaſionally allowed.

" any such offender shall be convicted, out of the money " forfeited, to cause the offender's name, place of abode, " and offence, to be published in some newspaper which " shall be printed or published in or near the county, city, " or place, where any such offence shall have been com- " mitted."

† *Sect.* 25. By 31. Geo. 2. c. 29. s. 22. " No person " shall put into any corn, meal, or flour, ground, dressed, " bolted, or manufactured for sale, any mixture or thing " whatsoever, or shall knowingly sell, offer, or expose to or " for sale, any meal of one sort of grain as or for the meal " of any other sort of grain, or any thing as or for or " mixed with the meal of any grain which shall not be the " real and genuine meal of the grain the same shall import " to be, upon pain of forfeiting any sum not exceeding five " pounds, nor less than forty-shillings." The penalty of adulterating corn, meal, or flour.

† *Sect.* 26. By 31. Geo. 2. c. 29. s. 23. " No person shall " put into any bread made for sale any mixture of meal of " any other sort of grain than of the grain the same shall " import to be and allowed to be made of, or any larger or " other proportion of any other or different sort of grain, " or the meal thereof, than what shall be allowed, or any " mixture or thing in lieu of flour, which shall not really " be the genuine flour the same shall import and ought to " be, upon pain of forfeiting not exceeding five pounds, " nor less than twenty shillings." Penalty where bread shall be of a different mixture of corn than what it importeth to be of, or is allowed.

† *Sect.* 27. By 31. Geo. 2. c. 29. s. 24. " If any person " shall make, send out, sell, or expose to or for sale, any " bread deficient in weight, he shall forfeit not exceeding " five shillings, nor less than one shilling, for every ounce " deficient; and for every loaf found wanting less than an " ounce, not exceeding two shillings and sixpence, nor less " than sixpence, so as such bread which shall be complained " of for wanting weight in any city, town-corporate, bo- " rough, liberty, or franchise having jurisdiction thereof, " or within the bills of mortality, shall be brought before " some magistrate, and weighed, within twenty-four hours " after, and so as such bread which shall be so complained " of as in any hundred, riding, division, liberty, rape, wa- " pentake, or place, shall be brought before some justice of " such place, and weighed, within three days after, unless " such deficiency wholly arose from some accident, or was " occasioned by some contrivance or confederacy." Penalty for making bread under weight, &c.

† *Sect.* 28. By 31. Geo. 2. c. 29. s. 25. " Every baker " shall cause to be fairly marked on every loaf of wheaten " bread All bread to be fairly marked.

" bread a large Roman W. and upon every loaf of houſe-
" hold or brown bread a large Roman H. ſo as the ſame
" may, on the view thereof, be aſcertained under what de-
" nomination of bread every ſuch loaf was made (except
" ſuch loaves which ſhall be raſped by the deſire of any per-
" ſon who ſhall order the ſame), on pain of forfeiting not
" exceeding twenty, nor leſs than five ſhillings."

Bakers taking a higher price or refuſing to ſell.

† *Sect.* 29. By 31. Geo. 2. c. 29. ſ. 26. "No perſon " ſhall take for any bread a higher price than ſhall be aſ-
" certained by the court, magiſtrate, or juſtices, authoriſed to
" ſet the price and aſſize, nor refuſe to ſell any to any per-
" ſon who ſhall tender ready money for the ſame, at the
" price ſuch bread, by the aſſize, ſhall be fixed at, when he
" ſhall have any ſuch bread in his houſe or poſſeſſion, to be
" ſold, more than ſhall be requiſite for the immediate ne-
" ceſſary uſe of his own family or cuſtomers; and it ſhall
" be incumbent on ſuch baker to prove the contrary, upon
" pain of forfeiting not exceeding forty, nor leſs than ten
" ſhillings."

Bread inferior to wheaten not to be higher than houſehold.

† *Sect.* 30. By 31. Geo. 2. c. 29. ſ. 26. "If any perſon " ſhall offer to ſale any bread of an inferior quality to
" wheaten bread, at a higher price than houſehold bread
" ſhould be ſet at by the aſſize, he ſhall forfeit, by confeſ-
" ſion, or the oath of one witneſs, twenty ſhillings."

The houſes, ſhops, &c. of bakers may be ſearched, and the bread weighed.

† *Sect.* 31. By 31. Geo. 2. c. 29. ſ. 27. and by 32. Geo. 2. c. 18. ſ. 2. "Any magiſtrate or juſtice, and alſo any peace-
" officer authoriſed by warrant of any ſuch magiſtrate, in
" the day-time may enter into any houſe, ſhop, ſtall, bake-
" houſe, warehouſe, or out houſe, of or belonging to any
" baker or ſeller of bread, to ſearch for, view, weigh, and
" try, all or any the bread which ſhall be there found; and
" if any bread, on any ſuch ſearch, ſhall be found to be
" wanting either in the goodneſs of the ſtuff whereof the
" ſame ſhall be made, or be deficient in the due baking or
" working thereof, or ſhall be wanting in the due weight,
" or ſhall not be truly marked according to the directions
" of this act, or ſhall be of any other ſort of bread than
" ſhall be allowed to be made by virtue of this act, any ſuch
" magiſtrate or peace-officer may ſeize the ſame, and diſpoſe
" thereof as he ſhall think fit."

Where any miller, meal-man or baker, ſhall be ſuſpected of adulterating; the magiſtrate, &c. upon information on oath, may enter the premiſes himſelf, and ſearch, or may grant a ſearch warrant to ſome peace-officer; and ſuch meal and flour as ſhall be deemed adulterated, may be ſeized:

† *Sect.* 32. By 31. Geo. 2. c. 29. ſ. 28. "If information " ſhall be given on oath to any magiſtrate or juſtice, that

" there

"there is cauſe to ſuſpect that any miller who grinds "any grain for reward, or any perſon who doth dreſs, bolt, "or in any wiſe manufacture, any meal or flour for ſale, or "any maker of bread for ſale, doth mix up with, or put "into, any meal or flour ground or manufactured for ſale, "any mixture, ingredient, or thing whatſoever, not the "genuine produce of the grain ſuch meal or flour ſhall im- "port and ought to be, or whereby the purity of any meal "or flour in the poſſeſſion of any ſuch miller, mealman, or "baker, is or ſhall be in any wiſe adulterated; then ſuch "magiſtrate or juſtice, and alſo any peace-officer, autho- "riſed by warrant, in the day-time, on information, may "enter into any houſe, mill, ſhop, bakehouſe, ſtall, bolting- "houſe, paſtry, warehouſe, or out-houſe, of or belonging "to any ſuch miller, mealman, or baker, and to ſearch and "examine; and if on any ſuch ſearch it ſhall appear that any "offence hath been committed contrary to this act, then "any magiſtrate, juſtice, or officer authoriſed as aforeſaid re- "ſpectively, may ſeize and take any meal or flour which "ſhall be deemed, on any ſuch ſearch, to have been adul- "terated, and all mixtures and ingredients which ſhall be "found and deemed to have been uſed, or intended to be "uſed, in or for any ſuch adulteration; and ſuch thereof "as ſhall be ſeized by any peace-officer or officers authoriſed "as aforeſaid ſhall be carried to ſome magiſtrate or juſtice; "and if any magiſtrate or juſtice, who ſhall make any ſei- "zure in purſuance of this act, or to whom any thing ſeized "under the authority of this act ſhall be brought, ſhall ad- "judge that any mixture or ingredients, not the genuine "produce of the grain which ſuch meal or flour ſo ſeized "ſhall import and ought to be, ſhall have been put into "any ſuch meal or flour, or that the purity of any ſuch "meal or flour ſo ſeized was adulterated by any mixture or "ingredient put therein; then every ſuch magiſtrate or juſ- "tice is hereby required to diſpoſe of the ſame as he ſhall "think proper."

† *Sect.* 33. By 31. Geo. 2. c. 29. ſ. 29. "Every miller, "mealman, baker, or ſeller of bread as aforeſaid, in whoſe "houſe, mill, ſhop, bakehouſe, ſtall, bolting houſe, paſtry, "warehouſe, out-houſe, or poſſeſſion, any mixture or in- "gredient ſhall be found, which ſhall be adjudged by any "magiſtrate or juſtice to have been lodged there *with an in-* "*tent* to have adulterated the purity of meal, flour, or bread, "ſhall, on being convicted by confeſſion or the oath of one "witneſs, *forfeit* not exceeding ten pounds, nor leſs than "forty ſhillings; unleſs that ſuch mixture or ingredients "was or were not brought or lodged with any deſign or in- "tent to have been put into any meal or flour, or to have

And the miller, mealman, or baker, forfeit not exceeding ten pounds, nor leſs than forty ſhillings.

" adulterated therewith the purity of any meal or flour, but " that the ſame was in the place for ſome other lawful pur- " poſe."

Exception.

" And the magiſtrate, out of the money forfeited, may " cauſe the offender's name, place of abode, and offence, to " be publiſhed in ſome newſpaper in or near the county, " city, or place, where any ſuch offence ſhall have been " committed."

Obſtructing any ſearch or ſeizure.

† *Sect.* 34. By 31. Geo. 2. c. 29. ſ. 30. " If any perſon " ſhall wilfully obſtruct any ſearch or ſeizure, or ſhall op- " poſe any ſuch ſearch being made, or the carrying away " any ſuch ingredients as aforeſaid, or any bread which " ſhall be ſeized, as not being made purſuant to this act, " he ſhall forfeit not exceeding five pounds, nor leſs than " twenty ſhillings."

No miller, mealman, or baker, to act as a magiſtrate.

† *Sect.* 35. By 31. Geo. 2. c. 29. ſ. 31. " No miller, " mealman, or baker, ſhall act as a magiſtrate, or juſtice of " the peace, under this act, on pain of fifty pounds to any " perſon who will ſue for the ſame, by action of debt, &c. " at Weſtminſter, or by ſummary complaint before the " court of ſeſſion in *Scotland*."

Where the penalty was occaſioned by the journeyman or ſervant, a recompence to be paid to the maſter.

† *Sect.* 36. By 31. Geo. 2. c. 29. ſ. 32. " If any baker " ſhall make complaint to any magiſtrate by the oath of " one witneſs that any offence ſhall have been occaſioned " through the wilful neglect of any ſervant, then ſuch ma- " giſtrate may iſſue his warrant for bringing ſuch ſervant " before any ſuch magiſtrate, or any magiſtrate or juſtice " of the county or place where the offender can be found, " and examine into the complaint; and, on proof thereof " upon oath, by an order under his hand, may adjudge " what ſum ſhall be paid by ſuch ſervant to his maſter or " miſtreſs, by way of recompence for the money he or ſhe " ſhall have paid by reaſon of the wilful neglect of any ſuch " ſervant; and if any ſuch ſervant ſhall neglect on his con- " viction to make immediate payment, he ſhall be com- " mitted to the houſe of correction, or ſome other priſon " of the county or place in which any ſuch ſervant ſhall " be apprehended or convicted, to be there kept to hard " labour not exceeding one calendar month, unleſs pay- " ment ſhall be made before the expiration of the ſaid " term."

Offences heard and determined in a ſummary way, and offenders may be ſummoned.

† *Sect.* 37. By 31. Geo. 2. c. 29. ſ. 33. " The mayor " of *London*, or any alderman within the liberties thereof,

" or

" or any other juſtice, or any one of them, within their " reſpective juriſdictions, may hear and determine, in a " ſummary way, all offences againſt this act, and ſummon " any offender; and in caſe the party ſhall not appear, or " offer ſome reaſonable excuſe for his default, then upon " oath by one witneſs of any offence committed contrary " to this act, any ſuch magiſtrate ſhall iſſue his warrant for " apprehending the offender; and upon the appearance, or " in caſe he ſhall not appear, on notice being left at his " uſual place of abode, or if he cannot be apprehended, " then ſuch magiſtrate is authoriſed to proceed to make in- " quiry touching the matters complained of, and to examine " any witneſs who ſhall be offered on either ſide, on oath, " as aforeſaid, and ſhall convict or acquit the party accuſed; " and if the penalty, on any ſuch conviction, ſhall not be " paid within twenty-four hours after, every ſuch magiſ- " trate ſhall thereupon iſſue a warrant, directed to any " peace-officer within their reſpective juriſdictions, to make " diſtreſs; and if any offender ſhall convey away his goods, " or ſo much thereof that the penalty cannot be levied, " then ſome magiſtrate, within whoſe juriſdiction the of- " fender ſhall have removed his goods, ſhall back the war- " rant for levying the diſtreſs; and if within five days from " the diſtreſs being taken, the money forfeited ſhall not be " paid, the goods ſeized ſhall be appraiſed and ſold; and " for want of ſuch diſtreſs, then every ſuch magiſtrate, on " the application of any proſecutor, and proof made of " the conviction and non-payment of the penalty and " charges, by warrant under his hand and ſeal, ſhall com- " mit every ſuch offender to the common gaol or houſe of " correction of the city or place where ſuch offender or " offenders ſhall be found, for one calendar month, unleſs " payment ſhall be made of the ſaid penalty, coſts and " charges, before the expiration of the ſaid one calendar " month.—And all ſuch penalties and forfeitures, when re- " covered, ſhall be paid to the informer."

† *Sect.* 38. But by 32. Geo. 2. c. 18. the generality of this application of the forfeiture to informers is reſtrained, and it is enacted, " That the penalties not *particularly* diſ- " poſed of by 31. Geo. 2. c. 29. where the conviction is " by confeſſion or the oath of one witneſs, ſhall be, *one* " *moiety* to the informer, and the other moiety, together " with all penalties incurred on the weighing, trying, or " ſeizing of any bread by any magiſtrate or juſtice, ſhall be " applied for the better carrying the ſaid act into execution, " as ſuch magiſtrate or juſtice ſhall think fit."

Power to ſummon material evidences.

† *Sect.* 39. By 31. Geo. 2. c. 29. ſ. 34. "If it ſhall be made out by the oath of any credible perſon, that any one is likely to give material evidence on behalf of the proſecutor or the perſon accuſed, and will not voluntarily appear before ſuch magiſtrate to be examined, every ſuch magiſtrate is authoriſed to ſummons every ſuch witneſs; and if any perſon ſo ſummoned ſhall neglect to appear, and no juſt excuſe ſhall be offered, then (after proof by oath of ſuch ſummons having been duly ſerved) every ſuch magiſtrate is authoriſed to iſſue his warrant under his hand and ſeal, to bring and examine upon oath every ſuch witneſs: and if on his appearance he ſhall refuſe to be examined on oath concerning the premiſes, without offering any juſt excuſe, any ſuch magiſtrate may, by warrant, commit any perſon ſo refuſing to the public priſon of the county or place in which he ſhall be, there to remain not exceeding fourteen, nor leſs than three days."

Witneſſes to be examined on oath.

No *certiorari*, &c.

† *Sect.* 40. By 31. Geo. 2. c. 29. ſ. 37. "No *certiorari*, letters of advocation, or of ſuſpenſion, ſhall be granted to remove any conviction, or other proceedings had thereon in purſuance of this act."

Perſons aggrieved may appeal to the next ſeſſions.

Appellant is to enter into recognizance to hear and determine the matter, and award coſts.

† *Sect.* 41. By 31. Geo. 2. c. 29. ſ. 38. "If any perſon ſhall think himſelf aggrieved, he ſhall have liberty to appeal to the next general or quarter ſeſſions for the county or place, upon entering into a recognizance at the time of conviction, with two ſufficient ſureties, in double the ſum which he ſhall have been adjudged to pay, upon condition to proſecute ſuch appeal with effect, and to be forthcoming to abide the judgment and determination of ſaid next general or general quarter ſeſſions, who ſhall finally determine the matter of every ſuch appeal, and award coſts to be paid by either party: and if the judgment ſhall be affirmed, ſuch appellant ſhall immediately pay down the ſum he ſhall have been adjudged to forfeit, with ſuch coſts as the ſeſſions ſhall award to the proſecutor or informer, for the expences ſuſtained by ſuch appeal; and in default of paying the ſame, any two ſuch juſtices, or any one magiſtrate or juſtice of the peace, having juriſdiction in the place into which any ſuch appellant ſhall eſcape, or where he ſhall reſide, ſhall commit every ſuch appellant to the common gaol of the county or place where he ſhall be apprehended, until he ſhall make payment; but if the appellant make good his appeal coſts ſhall be awarded to the appellant againſt ſuch informer and which coſts may be recovered by the appellant againſt any ſuch informer, in like manner as

" coſts

" costs given at any general or general quarter sessions of " the peace are recoverable."

† *Sect.* 42. By 31. Geo. 2. c. 29. s. 39. " If any such " conviction shall be made within six days before any ge- " neral or general quarter sessions for the county or place " where such conviction shall have been made, then the " party aggrieved shall, on entering into a recognizance as " before directed, appeal either to the then next or the next " following sessions." Appeal to the sessions following.

† *Sect.* 43. By 31. Geo. 2. c. 29. s. 40. " Every action " or suit brought against any magistrate or any peace-of- " ficer, for any thing done under this act, shall be com- " menced within six months next after the fact committed, " and shall be laid in the county, city, or place, where the " matter shall arise; and that the 24. Geo. 2. c. 44. so far " as relates to the rendering the justices more safe in the ex- " ecution of their office, shall extend to the magistrate act- " ing under this act; and that no action or suit shall be " had, nor any writ sued out, or copy of any writ be served " upon, any peace-officer, until seven days after notice in " writing, given to or left for him at his place of abode, by " the attorney for the party intending to commence such " action; which notice shall contain the name and place " of abode of the person intending to bring such action, " and also of his attorney, and likewise the cause of action " or complaint: and any peace-officer may, at any time " within seven days after any such notice, tender, or cause " to be tendered, any sum of money, as amends for the " injury complained of, to the party complaining, or to " the attorney named in any such notice; and, if not ac- " cepted, the defendant may plead such tender in bar, to- " gether with the general issue, or any other plea, with " leave of the court in which the action shall be com- " menced; and if, upon issue joined on such tender, the " jury shall find the amends tendered to have been suf- " ficient, they shall find a verdict for the defendant; and " in such case, or if the plaintiff become nonsuit, discon- " tinue, or judgment shall be given for the defendant upon " demurrer, or if any action or suit shall be brought after " the time limited, or shall be brought in any other place " than as aforesaid, then the jury shall find for the de- " fendant, and he shall be intitled to costs: but if the jury " shall find that no such tender was made, or not sufficient, " or against the defendant, they shall give the plaintiff such " damages as they shall think proper; and the plaintiff shall " recover costs." Limitation of actions.

Vide the reasons for extending the protection of this statute to persons acting under the present act. 1. Burn's Justice, p. 256.

Officer may make tender of amends.

Perſons may plead the general iſſue, and obtain treble coſts.

† *Sect.* 44. By 31. Geo. 2. c. 29. ſ. 40. "The defendant may plead the general iſſue, and give this act and the ſpecial matter in evidence; and if a verdict ſhall be recorded for the defendant, or if the plaintiff ſhall be nonſuited, or diſcontinue his action after the defendant ſhall have appeared; or if judgment ſhall be given, upon a verdict or demurrer, againſt the plaintiff, the defendant ſhall recover treble coſts."

Proſecution in three days.

† *Sect.* 45. By 31. Geo. 2. c. 29. ſ. 41. "No perſon ſhall be convicted, for any of the beforementioned offences, unleſs the proſecution be commenced within three days next after the offence committed."

General reſervation of rights.

† *Sect.* 46. "This act ſhall not extend to prejudice any right or cuſtom of the city of *London*, or the practice there uſed, or any right or cuſtom of any lord or lords of any leet, to ſet, inquire, and puniſh, the breach of aſſize of bread, or the right of any clerk of the market."

Reſervation of rights of Weſtminſter, to ſet an aſſize of bread within the city and liberty.

† *Sect.* 47. "Nor to prejudice the ancient right or cuſtom of the dean of *Weſtminſter*, or the high ſteward of *Weſtminſter*, and the liberties thereof, to ſet, aſcertain, and appoint the aſſize and weight of all ſorts of bread; but they may reſpectively ſet, aſcertain, and appoint, according to the meaning of this act, the aſſize and weight of all ſorts of bread which ſhall be made, ſold, or expoſed to ſale, in *Weſtminſter*, and the liberties thereof; and ſhall and may inquire and puniſh the breach of every ſuch aſſize and weight of bread, as fully and freely in all reſpects, as they or any of them have heretofore been accuſtomed to."

Oxford and Cambridge to ſet an aſſize.

† *Sect.* 48. "Nor to prejudice the right of *Oxford* or *Cambridge*, or of their clerks of their market, to ſet the aſſize and weight of all ſorts of bread, &c."

As to the ſecond particular, *viz.* As to the making of *bread* when no aſſize is ſet.

No aſſized and prized bread to be made at the ſame time in the ſame place.

† *Sect.* 49. By 3. Geo. 3. c. 11. ſ. 1. "Although no aſſize of bread ſhall be ſet in purſuance of 31. Geo. 2. c. 29. no loaf called or deemed aſſize loaf in the tables of the aſſize and price of bread in the ſaid act referred to, ſhall be made for ſale, in any place where any loaf of the bread called or deemed prized loaf, in the ſaid tables of the aſſize and price of bread, that is to ſay, no aſſize loaves of the price of three-pence, and prized loaves called half-quartern loaves, nor aſſize loaves of the price of ſix-pence, and

" and prized loaves called quartern loaves, nor aſſize loaves " of the price of twelve-pence, and prized loaves called " half-peck loaves, nor aſſize loaves of the price of eighteen " pence, and prized loaves called peck loaves, ſhall, at the " ſame time, in any place be made for ſale, ſold, or carried " out for ſale, or be offered or expoſed to or for ſale, or " allowed to be ſold, on pain of forfeiting not exceeding " forty, nor leſs than ten ſhillings."

† *Sect.* 50. By 3. Geo. 3. c. 11. ſ. 2. " The juſtices at " any general quarter ſeſſion, or at any petty ſeſſion, ſhall " appoint which of the ſorts of aſſize or prized loaves ſhall " be allowed to be made and ſold; and alſo what other " ſorts of bread, and grain, ſhall be allowed to be made " and ſold within their reſpective juriſdictions, or any " part thereof; and every order which ſhall be ſo made, " ſhall be entered in a book provided for that purpoſe, and " inſpected by the makers of bread for ſale, in the day-time, " without fee; and after the making every ſuch order, the " juſtices who ſhall make the ſame ſhall cauſe a copy to be " affixed up in ſome market or other public town within " the diviſion or place in which ſuch order is to be ob- " ſerved; or elſe ſhall cauſe a copy to be inſerted in ſome " public newſpaper publiſhed in the county or place, or " ſome part thereof in which every ſuch order is to be " obſerved."

Quarter or petty ſeſſion may appoint the ſorts of aſſize or prized loaves, and what other bread ſhall be made.

A copy to be publiſhed.

† *Sect.* 51. By 3. Geo. 3. c. 11. ſ. 3. " No juſtices " ſhall allow any ſorts of aſſize bread made of the flour or " meal of wheat, other than wheaten and houſehold bread, " and loaves of white bread of the price of two-pence, or " under.

Sorts of aſſize bread of wheat to be allowed.

† *Sect.* 52. By 3. Geo. 3. c. 11. ſ. 4. " Every maker " of bread for ſale ſhall obſerve the proportion between " white and wheaten bread, and wheaten and houſehold " aſſize bread, as to weight, as is mentioned in the ſaid aſ- " ſize tables; that is to ſay, every white loaf of the price of " two-pence, or under, ſhall always weigh three parts in " four of the weight of the wheaten loaf of the like price; " and every wheaten aſſize loaf of bread, of whatſoever " price the ſame ſhall be, ſhall always weigh three parts in " four of the weight of every houſehold aſſize loaf of bread " of the like price; and that every houſehold aſſize loaf of " bread, of whatever price the ſame ſhall be, ſhall always " weigh one third part more than every wheaten aſſize loaf " of the like price, on pain of forfeiting not exceeding forty " ſhillings."

Proportion as to weight, between the white and wheaten bread, and the wheaten and houſehold aſſize bread.

† *Sect.*

The price in the peck loaf, and half-peck, and in other ſubdiviſions, in the wheaten and in houſehold bread.

† *Sect.* 53. By 3. Geo 3. c. 11. ſ. 5. "Every peck, half-peck, quarter of a peck, and half-quarter of a peck loaf, of the meal or flour of wheat, and called wheaten bread, ſhall always be ſold in proportion to each other reſpectively, as to price; and that every peck, half-peck, quarter of a peck, and half-quarter of a peck loaf made for ſale, of the meal or flour of wheat, and called houſehold bread, ſhall always be ſold in proportion to each other, and for one fourth leſs in price than the loaf made for ſale with the meal or flour of wheat, called wheaten bread, of the ſame denomination, on pain of forfeiting not exceeding forty, nor leſs than ten ſhillings."

The weight of the peck loaf, and its ſubdiviſions, in every ſort of bread; the ſame to be weighed before a juſtice, within 24 hours, and in other places within three days; unleſs deficiency be accounted for.

† *Sect.* 54. By 3. Geo. 3. c. 11. ſ. 6. "The ſeveral loaves after mentioned, ſhall weigh, in averdupois weight, as follows: that is to ſay, every peck loaf, ſeventeen pounds ſix ounces; every half-peck loaf, eight pounds eleven ounces; every quarter of a peck loaf, four pounds five ounces, and one half-ounce; and every half-quarter of a peck loaf, two pounds two ounces and three quarters; on pain of forfeiting not exceeding five ſhillings, nor leſs than one ſhilling for every ounce wanting; and for leſs than one ounce, not exceeding two ſhillings and ſix-pence, nor leſs than ſix-pence; ſo as all ſuch bread in any city, town-corporate, borough, liberty, or franchiſe, or the juriſdiction thereof, or within the weekly bills of mortality, ſhall be brought before ſome juſtice and weighed, within twenty-four hours after the ſame ſhall have been baked, or found in any perſon's cuſtody for ſale, and elſewhere, within three days, unleſs it ſhall be made out, that ſuch deficiency wholly aroſe from ſome unavoidable accident, or was occaſioned by ſome contrivance or confederacy."

Bread inferior to wheaten, not to be ſold higher than houſehold.

† *Sect.* 55. By 3. Geo. 3. c. 11. ſ. 7. "No perſon ſhall offer to ſale any bread of an inferior quality to wheaten bread, at an higher price than houſehold bread, upon pain of forfeiting not exceeding twenty ſhillings."

A large Roman (W) to be imprinted on all wheaten bread, and a large Roman (H) on houſehold.

† *Sect.* 56. By 3. Geo. 3. c. 11. ſ. 8. "On the ſaid wheaten or houſehold bread ſhall be imprinted a large Roman (W), and on houſehold a large Roman (H), except loaves raſped by the deſire of the perſon who ſhall order the ſame, on penalty of forfeiting not exceeding forty, nor leſs than ten ſhillings; unleſs it wholly aroſe from ſome unavoidable accident, or was occaſioned by contrivance or confederacy."

† *Sect.*

† *Sect.* 57. By 3. Geo. 3. c. 11. f. 9. "Every loaf made of any other grain than wheat, ſhall be marked with ſome letter or letters, not more than two, as the general or quarter ſeſſion, or any petty ſeſſion ſhall direct; which order ſhall be entered in ſome book which any maker of bread may peruſe without fee, and ſuch juſtices ſhall cauſe a copy to be put up in ſome public town within the diviſion, or ſhall cauſe a copy thereof to be inſerted in ſome public newſpaper publiſhed in the county; and if the juſtices ſhall neglect, then the maker of ſuch bread ſhall, in every place where no ſuch order ſhall be made, cauſe every loaf of ſuch bread to be marked with any two diſtinct capital letters as he ſhall think fit (except loaves raſped by deſire) on pain of forfeiting, not exceeding forty, nor leſs than five ſhillings, for every loaf of ſuch bread which ſhall not be ſo marked as herein before is firſt directed."

Bread made of any other grain than wheat, to be impreſſed with ſuch letters as the juſtices ſhall order. An entry to be made free for inſpection. Where the juſtices neglect to make ſuch order, the maker is to make every ſuch loaf with two diſtinct capital letters. Penalty.

† *Sect.* 58. By 3. Geo. 3. c. 11. f. 10. "Any juſtice, or peace-officer by warrant of ſuch juſtice, may enter any place belonging to any baker, to ſearch, view, weigh, examine, and try, all or any bread which ſhall be there found; and if any bread ſhall, on examination thereof, by any juſtice, or on the oath of one witneſs, be found deficient in weight, or not marked, or be deficient in the due baking or working thereof, or be wanting in the goodneſs of the ſtuff, or to have been made with any mixture of meal or flour of any other grain than the ſame ſhall import to be made with, or to be made with any other proportion of grain, or to be made with any ingredient which ought not to be put therein; or to be made with any thing in lieu of flour, or that any ſuch bread ſhall be made with any leaven not allowed; every juſtice and officer as aforeſaid ſhall ſeize ſuch bread; and diſpoſe thereof to poor perſons, unleſs the default wholly aroſe from accident, or contrivance or confederacy, upon pain of forfeiting not exceeding five pounds, nor leſs than twenty ſhillings."

Juſtices, or peace-officers, may enter houſes, and ſearch, &c. Bread found defective in the weight, or not marked, &c. may be ſeized.

† *Sect.* 59. By 3. Geo. 3. c. 11. f. 11. "If any perſon ſhall in any wiſe oppoſe any ſearch, view, weighing, trying, or ſeizing of any bread, he ſhall forfeit not exceeding forty, nor leſs than twenty ſhillings."

Penalty of oppoſing.

† *Sect.* 60. By 3. Geo. 3. c. 11. f. 12. "No miller, mealman, or baker, ſhall be allowed to act as a juſtice under this act, on pain of fifty pounds, to whoever will inform or ſue for the ſame at *Weſtminſter*, &c. or by way of

No miller, mealman, or baker, may act as a juſtice.

" of ſummary complaint, before the court of ſeſſion in " *Scotland.*"

Default of ſervants.

† *Sect.* 61. By 3. Geo. 3. c. 11. ſ. 13. " If any baker " ſhall make complaint to any juſtice, by the oath of one " witneſs, that any offence ſhall have been occaſioned " by default of any ſervant, every ſuch juſtice may iſſue " his warrant for bringing ſuch ſervant before any ſuch " juſtice, or any juſtice of the county or place where " the offender can be found, and examine into the matter;

Satisfaction.

" and on proof upon oath, is to adjudge and order what " ſum of money ſhall be paid to his maſter or miſtreſs, for " the money he or ſhe ſhall have paid, by reaſon of the

Nonpayment.

" default of ſuch ſervant; and if ſuch ſervant ſhall refuſe " on his conviction immediate payment, then any ſuch " juſtice may cauſe every ſuch ſervant to be committed to

Commitment.

" the houſe of correction, or ſome other priſon of the " county or place in which he ſhall be apprehended, to be " kept to hard labour, not exceeding one calendar month, " unleſs payment ſhall be made."

† *Sect.* 62. By 3. Geo. 3. c. 11. ſ. 14, 15, 16. parts of this ſtatute, it is enacted, " That juſtices ſhall hear and " determine the ſeveral offences; and that the penalties and " forfeitures ſhall be recovered, as by the before recited " act 31. Geo. 2. c. 29. ſ. 34, 35, 36. is therein di- " rected."

† *Sect.* 63. By 3. Geo. 3. c. 11. ſ. 17, 18, 19. " No *certiorari* ſhall be granted to remove any conviction or other " proceedings had thereupon; and the like liberty of ap- " peal is preciſely given as by 31. Geo. 2. c. 29. ſ. 37, " 38, 39."

† *Sect.* 64. By 3. Geo. 3. c. 11. ſ. 20, 21, 22. the ſame limitation of actions; protection to juſtices and officers, &c. coſts, &c. is enacted in the preciſe words of 31. Geo. 2. c. 29. ſ. 40, 41.

Limitation of proſecutions.

† *Sect.* 65. By 3. Geo. 3. c. 11. ſ. 23. " No perſon ſhall " be convicted under this act, unleſs the proſecution be " commenced within three days; and no perſon con- " victed upon this act, ſhall be ſubject or liable to be pro- " ſecuted for the ſame offence under any other law."

† *Sect.* 66. By 3. Geo. 3. c. 11. ſ. 24. the penalties and forfeitures are to be diſtributed as directed by 32. Geo. 2. c. 18. The rights of the univerſities are ſaved in the ſame words as by 31. Geo. 2. c. 29. ſ. 44, 45.

As

As to the third particular, *viz.* As to the making of *ſtandard wheaten* bread.

Sect. 67. But as by the foregoing acts of 31. Geo. 2. c. 29. and 3. Geo. 3. c. 11. two ſorts of bread, made of wheat only, are allowed to be made for ſale, *viz.* WHEATEN and HOUSEHOLD; it is enacted by 13. Geo. 3. c. 62. "That "bread of the flour of wheat, which flour, without any "mixture or diviſion, ſhall be the whole produce of the "grain, the bran or hull thereof only excepted, and which "ſhall weigh three fourth parts of the weight of the wheat "whereof it ſhall be made, may be at all times made and "ſold, and ſhall be called A STANDARD WHEATEN "BREAD." Standard wheaten allowed.

† *Sect.* 68. By 13. Geo. 3. c. 62. ſ. 2. "The bakers "ſhall mark every loaf thereof with the capital letters S. W. "and that the ſame may be ſold, although no aſſize of bread "be ſet of the weight and in the proportions following; "that is to ſay, that every ſtandard wheaten peck loaf ſhall "always weigh 17lb. 6oz. avoirdupois, every half-peck loaf "8lb. 11oz. and every quartern loaf 4lb. 5oz. and one half "of an ounce avoirdupois; and that every peck loaf, half-"peck loaf, and quartern loaf, ſhall always be ſold, as to "price, in proportion to each other reſpectively; and that "where wheaten and houſehold bread, made as the law "now directs, ſhall be ſold at the ſame time, together with "this ſtandard wheaten bread, they be ſold in reſpect of "and in proportion to each other, as followeth: that is to "ſay, that the ſame weight of wheaten bread as coſts eight-"pence, the ſame weight of this ſtandard wheaten bread "ſhall coſt ſeven-pence, and the ſame weight of houſehold "bread ſhall coſt ſix-pence, or ſeven ſtandard wheaten aſ-"ſized loaves, ſhall weigh equal to eight wheaten aſſized "loaves or to ſix houſehold aſſized loaves of the ſame price, "as near as may be." Weight, price, and proportions.

† *Sect.* 69. By 13. Geo. 3. c. 62. ſ. 3. "The ſaid ſtand-"ard wheaten bread ſhall not be ſold as prized loaves, at "one and the ſame time, together with aſſized loaves of the "ſame ſtandard wheaten bread." Standard wheaten not to be ſold as prized loaves at one time.

† *Sect.* 70. By 13. Geo. 3. c. 62. ſ. 4. "Every magiſ-"trate, or others authoriſed to ſet the aſſize and fix the "price of bread, are authoriſed to ſet the aſſize on, or fix "the price of the ſtandard wheaten bread aforeſaid, accord-"ing to the following Table." Magiſtrates to ſet the aſſize.

The

The Assize Table.

Price of the bushel of wheat and baking.		Small Bread.						Large Assize Bread.								
		Penny.			TwoPence.			Six Pence.			12 Pence.			18 Pence.		
s.	d.	oz.	dr.		lb.	oz.	dr.	lb.	oz.	dr	lb.	oz.	dr.	lb.	oz.	dr.
2	9	25	4		3	2	9	9	7	11	18	15	5	28	7	0
3	0	23	3		2	14	5	8	12	0	17	6	1	26	1	1
3	3	21	6		2	10	12	8	0	5	16	0	11	24	1	0
3	6	19	14		2	7	12	7	7	3	14	14	5	22	15	8
3	9	18	9		2	5	1	6	15	4	13	14	7	20	13	11
4	0	17	6		2	2	12	6	8	4	13	0	9	19	8	13
4	3	16	6		2	0	11	6	2	2	12	4	4	18	6	7
4	6	15	7		1	14	4	5	12	11	11	9	6	17	6	1
4	9	14	10		1	13	4	5	7	13	10	15	10	16	7	7
5	0	13	14		1	11	13	5	3	7	10	6	13	15	10	4
5	3	13	4		1	10	8	4	15	7	9	14	4	14	14	5
5	6	12	10		1	9	4	4	11	13	9	7	11	14	3	8
5	9	12	1		1	8	3	4	8	9	9	1	1	13	9	10
6	0	11	9		1	7	3	4	5	8	8	11	1	13	0	9
6	3	11	2		1	6	4	4	2	12	8	5	8	12	8	3
6	6	10	11		1	5	6	4	0	3	8	0	5	12	0	8
6	9	10	5		1	4	10	3	13	13	7	11	9	11	9	6
7	0	9	15		1	3	14	3	11	9	7	7	3	11	2	12
7	3	9	9		1	3	3	3	9	8	7	3	1	10	12	9
7	6	9	4		1	2	9	3	7	10	6	15	4	10	6	13
7	9	9	0		1	1	15	3	5	13	6	11	0	10	1	7
8	0	8	11		1	1	6	3	4	2	6	8	4	9	12	7
8	3	8	7		1	0	14	3	2	9	6	5	2	9	7	11
8	6	8	3		1	0	6	3	1	1	6	2	2	9	3	3

The Assize Table continued.

Price of the bushel of wheat and baking.	Small Bread.						Large Assize Bread.											
	Penny.			TwoPence.			Six Pence.			12 Pence.			18 Pence.					
s.	d.	oz.	dr.	lb.	oz.	dr.	lb.	oz.	dr.	lb.	oz.	dr.	lb.	oz.	dr.			
8	9	7	15	0	15	14	2	15	11	5	15	5	8	15	0			
9	0	7	12	0	15	7	2	14	5	5	12	11	8	11	0			
9	3	7	8	0	15	0	2	13	1	5	10	3	8	7	4			
9	6	7	5	0	14	10	2	11	14	5	7	13	8	3	11			
9	9	7	2	0	14	4	2	10	12	5	5	9	8	0	5			
10	0	6	15	0	13	14	2	9	11	5	3	7	7	13	2			
10	3	6	13	0	13	9	2	8	11	5	1	6	7	10	1			
10	6	6	10	0	13	4	2	7	12	4	15	7	7	7	3			
10	9	6	7	0	12	15	2	6	13	4	13	10	7	4	6			
11	0	6	5	0	12	10	2	5	15	4	11	13	7	1	12			
11	3	6	3	0	12	6	2	5	1	4	10	2	6	15	4			
11	6	6	1	0	12	1	2	4	4	4	8	9	6	12	13			
11	9	5	15	0	11	13	2	3	8	4	7	0	6	10	8			
12	0	5	13	0	11	9	2	2	12	4	5	8	6	8	4			
12	3	5	11	0	11	6	2	2	1	4	4	2	6	6	2			
12	6	5	9	0	11	2	2	1	6	4	2	12	6	4	2			
12	9	5	7	0	10	14	2	0	11	4	1	7	6	2	2			
13	0	5	6	0	10	11	2	0	1	4	3	0	6	0	4			
13	3	5	4	0	10	8	1	15	8	3	14	15	5	14	7			
13	6	5	2	0	10	5	1	14	14	3	13	13	5	12	11			
13	9	5	1	0	10	2	1	14	5	3	12	11	5	11	0			
14	0	4	15	0	9	15	1	13	13	3	11	9	5	9	6			
14	3	4	14	0	9	12	1	13	4	3	10	9	5	7	13			
14	6	4	13	0	9	9	1	12	12	3	9	8	5	6	5			

The

THE PRICE TABLE.

The Price Table. Prized Bread. Quartern Loaf.		Half Peck Loaf.		Peck Loaf.		The price of the buthel of wheat and baking.	
s.	d.	s.	d.	s.	d.	s.	d.
0	2	0	5½	0	11	2	9
0	3¾	0	6	1	0	3	0
0	3¼	0	6½	1	1	3	3
0	3½	0	7	1	2	3	6
0	3¾	0	7½	1	3	3	9
0	4	0	8	1	4	4	0
0	4¼	0	8½	1	5	4	3
0	4½	0	9	1	6	4	6
0	4¾	0	9½	1	7	4	9
0	5	0	10	1	8	5	0
0	5¼	0	10½	1	9	5	3
0	5½	0	11	1	10	5	6
0	5¾	0	11½	1	11	5	9
0	6	1	0	2	0	6	0
0	6¼	1	0½	2	1	6	3
0	6½	1	1	2	2	6	6
0	6¾	1	1½	2	3	6	9
0	7	1	2	2	4	7	0
0	7¼	1	2½	2	5	7	3
0	7½	1	3	2	6	7	6
0	7¾	1	3½	2	7	7	9
0	8	1	4	2	8	8	0
0	8¼	1	4½	2	9	8	3
0	8½	1	5	2	10	8	6

The Price Table. Prized Bread. Quartern Loaf.		Half Peck Loaf.		Peck Loaf.		The price of the buthel of wheat and baking.	
s.	d.	s.	d.	s.	d.	s.	d.
0	8¾	1	5½	2	11	8	9
0	9	1	6	3	0	9	0
0	9¼	1	6½	3	1	9	3
0	9½	1	7	3	2	9	6
0	9¾	1	7½	3	3	9	9
0	10	1	8	3	4	10	0
0	10¼	1	8½	3	5	10	3
0	10½	1	9	3	6	10	6
0	10¾	1	9½	3	7	10	9
0	11	1	10	3	8	11	0
0	11¼	1	10½	3	9	11	3
0	11½	1	11	3	10	11	6
0	11¾	1	11½	3	11	11	9
1	0	2	0	4	0	12	0
1	0¼	2	0½	4	1	12	3
1	0½	2	1	4	2	12	6
1	0¾	2	1½	4	3	12	9
1	1	2	2	4	4	13	0
1	1¼	2	2½	4	5	13	3
1	1½	2	3	4	6	13	6
1	1¾	2	3½	4	7	13	9
1	2	2	4	4	8	14	0
1	2¼	2	4½	4	9	14	3
1	2½	2	5	4	10	14	6

† *Sect.* 68. By 13. Geo. 3. c. 62. ſ. 5. "All perſons ſelling the ſaid bread ſhall be liable to the penalties as they are liable to by the laws now in being, for any miſdemeanor or neglect in reſpect to making, marking, ſelling, or expoſing to or for ſale, wheaten or houſehold bread." Penalties.

† *Sect.* 69. By 13. Geo. 3. c. 62. ſ. 6. "If any information ſhall be laid againſt any baker for making, marking, baking, or expoſing to or for ſale, any bread, purporting to be the ſtandard wheaten bread aforeſaid, made of flour not being the whole produce of the wheat, the bran or hull thereof only excepted, and weighing three fourth parts of the weight of the wheat whereof it was made, and ſuch baker ſhall prove that he bought the ſaid flour as and for ſuch flour as aforeſaid, of the miller or mealman, naming his name and place of abode, the baker ſhall ſtand clear and acquitted, and the miller or mealman ſhall pay the penalties of adulterating corn, meal, or flour, by 31. Geo. 2. c. 5, 6." The miller or mealman ſelling adulterated flour, ſhall forfeit the penalties directed by act 31. Geo. 2.

† *Sect.* 70. By 13. Geo. 3. c. 62. ſ. 7. "When any magiſtrate ſhall have ſet an aſſize on, or fixed the price of, the ſaid ſtandard wheaten bread, they may omit the ſetting an aſſize upon, or fixing the price of, any other ſort of bread." An aſſize on the price of ſtandard wheaten bread fixed, the price of any other ſort may be omitted.

† *Sect.* 71. By 13. Geo. 3. c. 62. ſ. 8. "The juſtices at any general or quarter ſeſſions may prohibit for three months, unleſs they ſhall ſee cauſe ſooner to revoke the order for ſuch prohibition at any adjourned quarter or ſpecial ſeſſions, makers from making for ſale any other ſorts of bread of a ſuperior quality, and ſold at a higher price, than the ſtandard wheaten bread: provided that no ſuch order for ſuch prohibition be in force until one calendar month after the date thereof; and every order ſhall be entered in a book, to be inſpected by the makers without paying any fee: and after the making every ſuch order the juſtices ſhall cauſe a copy to be affixed in ſome market or other public town within the diviſion, or inſerted in ſome public newſpaper publiſhed in the county or place." Quarter-ſeſſions may prohibit for three months other bread than ſtandard wheaten.

† *Sect.* 72. By 13. Geo. 3. c. 62. ſ. 9. "Within *London* and the liberties thereof, the Company of Bakers, and in any other place any baker, may offer all ſuch objections as ſuch Company of Bakers think fit, againſt ſuch prohibition, at the time when ſuch juſtices ſhall have under conſideration the ordering ſuch prohibition as aforeſaid." Company of Bakers of London, &c. may offer objections.

Wheaten loaves of the price of 1d. or 2d. may be made.

† *Sect.* 73. By 13. Geo. 3. c. 62. f. 10. "Nothing ſhall "prevent the magiſtrates and others who are authoriſed to "ſet an aſſize on bread, from allowing any white loaves or "wheaten loaves of the price of one penny, or two pence, "to be made and ſold according to the TABLE contained "in 31. Geo. 2. f. 10."

No aſſize on coarſer bread at a lower price.

† *Sect.* 74. By 13. Geo. 3. c. 62. f. 11. it is recited, "That there may be many places where the inferior claſſes are "uſed to bread made of wheat, of a coarſe and cheaper ſort "than the ſtandard wheaten bread;" and enacted, "That any "baker may make ſuch inferior bread, provided he ſell at a "price under that of the houſehold bread, as directed by "31. Geo. 2."

Bread coarſer ſold at the aſſized houſehold bread price, liable to penalties.

† *Sect.* 75. By 13. Geo. 3. c. 62. f. 12. "When and "where any baker ſhall ſell ſuch inferior bread by weights "and prices whereat the houſehold bread aforeſaid is at that "time aſſized, or priced, or ſold, he ſhall be liable to the "ſame as bakers are now by law liable to for any of the "like miſdemeanors."

Powers of the magiſtrates.

† *Sect.* 76. By 13. Geo. 3. c. 62. f. 13. "Every ma-"giſtrate ſhall have all powers relative to aſſizing, pricing, "and regulating the ſtandard wheaten-bread, and puniſh-"ing, as they have by any law now in being relative to any "bread whatſoever."

No compoſition to be uſed.

THIRDLY, As to ALE AND BEER.

Sect. 77. By 1. Will. 3. ſeſſ. 1. c. 24. f. 17. "No com-"mon brewer or retailer of ale or beer ſhall uſe therein any "molaſſes, coarſe ſugar, or any compoſition or extract "thereof, on pain of forfeiting the ſaid liquor, and alſo "one hundred pounds, half to the king and half to the "proſecutor, if ſued for in ſix months."

Penalty.

† *Sect.* 78. By 10. & 11. Will. 3. c. 21. f. 34. "If any "common brewer or retailer ſhall commit the ſaid offence, "or ſhall receive into his cuſtody any quantity of the ſaid "materials exceeding ten pounds, he ſhall forfeit one hun-"dred pounds, to be recovered and mitigated by the laws "of exciſe; and the ſervant or aſſiſtant therein, twenty "pounds, in like manner; and in default of payment ſhall "be impriſoned three months."

† *Sect.* 79. By 9. Ann. c. 12. par. 24. 26. "No com-"mon brewer, innkeeper, or victualler, ſhall uſe any broom, "wormwood, or other bitter ingredient (to ſerve inſtead of "hops) in any beer or ale for ſale (except infuſing the ſame

"after

" after it is brewed and tunned, to make broom or worm-
" wood ale or beer), on pain of twenty pounds, half to the
" profecutor, &c. to be levied by the laws of excife."

† *Sect.* 80. By 12. Ann. ſtat. 1. c. 2. " No common
" brewer or retailer of beer or ale ſhall uſe any ſugar, honey,
" foreign grains, *Guinea* pepper, *eſſentia bina*, *coculus Indicus*,
" or any unwholeſome ingredients, in the brewing of ale or
" beer, or mix any of them therewith, on pain of 20l. to
" be diſtributed, recovered, and mitigated as aforeſaid."

N. B. As to inhancing the price of ale, &c. vide 2. & 3. Edw. 6. c. 15. and 2. Geo. 3. c. 14. before recited.

† *Sect.* 81. By 8. Eliz. c. 9. " Magiſtrates, both in coun-
" ties and corporations, ſhall fix the price of all ale and beer
" veſſels yearly, at their Eaſter ſeſſions."

† *Sect.* 82. By 12. Car. 2. c. 24. ſ. 34. and 1. Will. 3. ſtat. 1. c. 24. ſ 5. " Within the bills of mortality every
" barrel of beer ſhall contain thirty-ſix gallons, and every
" barrel of ale thirty-two gallons; and in all other places
" every barrel of ale or beer ſhall meaſure thirty-four gal-
" lons."

† *Sect.* 83. By 11. & 12. Will. 3. c. 15. " All retailers
" of ale and beer ſhall retail the ſame by a ſtandard meaſure,
" to be marked by a magiſtrate, upon penalty of any ſum
" between ten ſhillings and forty ſhillings; and if they refuſe
" to ſpecify the quantities ſold, they ſhall loſe the privilege
" of detaining the goods of their gueſts in ſatisfaction of
" the reckoning."

Vide Blackerby. 10. 1. Burn's Juſtice, 39.

† *Sect.* 84. By 1. Will. & Mary, ſeſſ. 1. c. 22. " Ale,
" beer, cyder, and mum, may be exported upon paying the
" duties."

† But by 2. Geo. 3. c. 14. which recites the above act of Will. 3. " If any merchant or maſter of any ſhip or veſſel,
" or other perſon, ſhall cauſe or ſuffer any of the ſaid li-
" quors, ſo exported as merchandize, to be unſhipped, un-
" laden, or laid on land, or put into any other ſhip or veſſel
" within Great Britain, they ſhall forfeit the ſame, and alſo
" fifty pounds for every caſk of ſuch reſpective liquors ſo
" unſhipped, &c." (3)

(3) N. B. For the exciſe and other regulations reſpecting ale, beer, cyder, perry, mum, metheglin, meads, ſweets, verjuice, and vinegar, vide 2. Burn's Juſtice, p. 32 to 46.

FOURTHLY, As to the article of BUTTER and CHEESE.

Sect. 85. It is recited by 13. and 14. Car. 2. c. 26. that as butter is one of the principal commodities of the pro-

duct of this kingdom, and is not only of univerſal uſe at home, but that great quantities are exported, it is thereupon enacted, "That every kilderkin of butter ſhall "contain one hundred and twelve pounds, every firkin fifty-"ſix pounds, and every pot fourteen pounds, reckoning "ſixteen ounces to the pound, and excluſive of the tare of "the kilderkin, firkin, or pot; that new and old butter "ſhall not be mixed; nor any whey-butter packed or mixed "with butter made of cream, but that every package ſhall "contain the ſame quality throughout; that no butter "ſhall be ſalted with any great ſalt, nor more ſmall ſalt "mixed with it than is neceſſary for its preſervation, on "pain of forfeiting the ſame, and ſix times the value of "every different pound of butter."

Noble *v.* Durel, 4. Term Rep. 271.

† *Sect.* 86. And it hath been decided, that as the Legiſlature has ordained by the above ſtatute, that every pound of butter ſhall contain ſixteen ounces, a cuſtom that every pound of butter ſold in a particular market-town ſhall weigh eighteen ounces, is bad.

† *Sect.* 87. By 13. & 14. Car. 2. c. 20. ſ. 3. "No per-"ſons whatſoever ſhall repack for ſale any butter, upon pain "of double the value. And whoever ſhall pack butter, ſhall "pack his butter into good and ſufficient caſks, &c. and "ſhall ſet upon every firkin and caſk, when the ſame is "thoroughly ſeaſoned in water, a continuing viſible mark "of the juſt weight of the empty caſk, and, when filled "with butter, the firſt letter of his chriſtian and ſurname at "length, with an iron brand, on pain of ten ſhillings for "every hundred weight of butter, and ſo in proportion for "a greater or leſs quantity. And every potter ſhall ſet upon "every pot which he ſhall make for the packing of butter "the juſt weight of ſuch pot when burnt, and his chriſtian "and ſurname as aforeſaid, on pain of one ſhilling for "every pot he ſhall omit ſo to mark; and every farmer or "packer of butter, two ſhillings for every pot he uſes ſo "omitted to be marked, one half to the poor, the other to "the proſecutor, to be recovered by action of debt, indict-"ment, information, or preſentment (if commenced within "four months after the ſale), either in the ſeſſions of the "peace, or in the court of record of the place where the "offence is committed."

† *Sect.* 88. By 4. Will. & Mary, c. 7. "After the "factor or buyer hath bought and contracted for the ſaid "commodity, and approved by ſearching and weighing the "ſame if he think fit, the ſeller ſhall not be liable to any "of the penalties above ſpecified; but the ſaid factor or "buyer ſhall mark the ſaid butter, or the caſk wherein "it

" it is, and in caſe the ſame ſhall be afterwards exchanged " or opened, the caſk changed, or any bad butter mixed " with good butter, or any other fraud be committed by " the ſeller, the offender, on conviction by one witneſs be- " fore one juſtice, ſhall forfeit twenty ſhillings for every " ſuch firkin and offence."

† *Sect.* 89. And by 4. Will. & Mary, c. 7. to the end the trade for butter and cheeſe may not be engroſſed by particular perſons, it is enacted, " That every warehouſe- " keeper, weigher, ſearcher, or ſhipper of butter and cheeſe, " at any port or place in this kingdom, ſhall receive all " butter and cheeſe brought to them for any of the cheeſe- " mongers free of the city of *London*, or other perſon " making the ſaid commodities, and ſhall take care and ſhip " the ſame, without preference, on the next veſſel for *London*, " unleſs the owners order the contrary, at the rate of two " ſhillings and ſix-pence a-load, and no more, on pain of " ten ſhillings for every firkin of butter, and five ſhillings " for every wey of cheeſe. And the ſaid weigher ſhall keep " a book of receiving and ſhipping the ſame, &c." (4)

(4) By 3. Hen. 6. c. 4. 18. Hen. 6. c. 3. butter and cheeſe may be exported to any place.—By 9. Hen. 6. c. 8. the wey of cheeſe ſhall be of a certain weight.—By 2. Ph. & Mary, c. 5. 13. Eliz. c. 25. ſ. 20. a licence is to be granted on the exportation.—By 21. Jac. 1. c. 22. juſtices may reſtrain the purchaſing of them.—By 32. Car. 2. c. 2. ſ. 9. the importation of foreign butter and cheeſe is reſtrained.—By 8. Geo. 1. c. 27. the packing of butter in the city of York is regulated.—By 17. Geo. 2. c. 8. the ſame at New Malton.—By 13. Geo. 3. c. 5. ſ. 2. cheeſe may be imported for a limited time, duty free.

FIFTHLY, As to CATTLE, &c.

† *Sect.* 90. It is enacted by 31. Geo. 2. c. 40. ſ. 11. " That no ſaleſman or other broker or factor, who ſhall be " employed to buy or ſell any ſort of cattle for others by " commiſſion, or for reward to be paid or taken by himſelf " or any ſervant or agent, ſhall, directly or indirectly, for " his own account, buy any live ox, bull, cow, ſteer, bul- " lock, heifer, calf, ſheep, lamb, or ſwine, in *London*, or " within the bills of mortality, or at any place while any " ſuch cattle ſhall be on the road, or be driving, bringing, " or coming up, or offered to or for ſale in *London*, or " within the bills of mortality (other than ſuch cattle which " any ſuch ſaleſman, broker, or factor, ſhall actually pur- " chaſe for the neceſſary uſe or proviſion of his family, and " ſhall actually uſe accordingly); and that no ſuch ſaleſ- " man, broker, or factor, ſhall ſell or expoſe, or offer to or " for ſale, on his own account, in *London*, or within the " bills of mortality, either by himſelf, or his ſervant or

" agent, any live ox, bull, cow, ſteer, bullock, heifer, calf, " ſheep, lamb or ſwine, upon pain, on every conviction, " of forfeiting double the value of any live cattle which he " ſhall ſo buy or ſell on his own account; provided the " proſecution be commenced within three days after the of- " fence committed."

† *Sect.* 91. " On complaint made on oath, the juſtice of " the diſtrict is to ſummon, &c. the offender and the wit- " neſſes, and, on the parties appearing or not appearing, " thereupon is to proceed to hear the complaint in a ſum- " mary way, and on ſuch payment of the forfeiture on con- " viction is to iſſue his warrant for the levying thereof by " diſtreſs and ſale, and for want of diſtreſs to commit the " offender for any time not exceeding one month, nor leſs " than ten days, unleſs payment be ſooner made. And a " witneſs refuſing to be examined, may be committed not " exceeding ten days. Appeal may be made by the ſeller, " if aggrieved, to the quarter-ſeſſions, on giving ſecurity " and notice, and the determination of the ſeſſions to be " final."

SIXTHLY, As to FISH, I ſhall examine,

1. The ſize and preſervation of them.

2. The rules for fiſhing in and near the ſea,

3. Their importation.

Vide 2. Inſt. 200.

† *Sect.* 92. It is ſaid, that fiſhponds, or waters wherein fiſh are kept and nouriſhed, being a matter of profit, and tending to the increaſe of victuals, any man may of common right erect them; and it is therefore provided by 3. Edw. 1. c. 20. " That if any be attainted at the ſuit of " the party of treſpaſſing in parks or ponds, great and large " amends ſhall be awarded, the offender ſuffer three months " impriſonment, make fine at the diſcretion of the Court, " and find ſurety not to offend again, &c."

As to the FIRST PARTICULAR, *viz.* Of the ſize and preſervation of fiſh.

† *Sect.* 93. It is enacted by 1. Geo. 1. ſtat. 2. c. 18. ſ. 14. " That no perſon ſhall cauſe any thing to be done in the " *Severn*, *Dee*, *Wye*, *Teame*, *Tees*, *Ribble*, *Merſey*, *Dun*, *Air*, " *Ouſe*, *Swale*, *Calder*, *Wharf*, *Eure*, *Darwent*, or *Trent*, " whereby the ſpawn of any ſalmon, or any ſalmon not " eighteen inches from the eye to the extent of the middle " of the tail, ſhall be taken or killed: or ſhall ſet any thing

" acroſs

"acroſs the ſaid rivers whereby the ſalmon may be hindered "from paſſing up to ſpawn: or ſhall, from 31 *July* to "12 *November* (except in the *Ribble*, where they may be "taken between the 1 *January* and 15 *September*), take "any ſalmon of any kind; or ſhall after every 12th *No-* "*vember* fiſh there for ſalmon with any net leſs than two "inches and a half in the meſh, on pain of forfeiting the "fiſh (*a*), nets, and five pounds, on conviction within one "month, on view, confeſſion, or one witneſs, by diſtreſs; "and to be diſtributed half to the informer and half to the "poor: on default, hard labour for any term between one "and three months, and ſuch other corporal puniſhment "as the juſtice ſhall think fit."

(*a*) As it is not ſaid who ſhall have the fiſh, they are forfeited to the king. 2. Burn, 321.

† *Sect.* 94. By 1. Geo. 1. c. 18. ſ. 15. "No ſalmon out "of the ſaid rivers ſhall be ſent to *London* under ſix pounds "weight, on pain that the ſender, buyer, and ſeller, ſhall "forfeit five pounds and the fiſh, to be levied and diſtri- "buted on conviction as aforeſaid, or to ſuffer impriſon- "ment as aforeſaid for three months, unleſs ſooner paid, "But by ſ. 17. an appeal may be to the next ſeſſions."

† *Sect.* 95. By 13 Edw. 1. ſtat. 1. c. 47. "No ſalmon "ſhall be taken in any water where ſalmon are taken be- "tween 8th *September* and the 11th of *November*; nor "ſhall any young ſalmon be taken at mill-pools (by "13. Rich. 2. ſ. 1. c. 19.), in any other places from *Mid-* "*April* to *Midſummer*, on pain of having the nets and en- "gines burnt, for the firſt offence; for the ſecond, impri- "ſonment for a quarter of a year; for the third, a whole "year; and ſo on, as the treſpaſs ſhall increaſe; and over- "ſeers ſhall be aſſigned (*b*) to inquire of the ſame."

(*b*) 2. Inſt. 477.

† *Sect.* 96. By 13. Rich. 2. ſtat. 1. c. 19. "No perſons "ſhall put into any waters at any time of the year any "nets called *ſtalkers*, nor any other engines whatever by "which the fry or breed of ſalmons, lampreys, or any other "fiſh, may be deſtroyed, on pain as aforeſaid. And all wa- "ters in *Lancaſhire* ſhall be put into defence as to taking of "ſalmon from *Michaelmas* to *Candlemas*, and in no other "time of the year."

† *Sect.* 97. By 17. Rich. 2. c. 19. "The juſtices of peace "and the lord-mayor of *London*, on the *Thames* and *Med-* "*way*, ſhall ſurvey the offences in both the acts laſt above "mentioned, and ſhall ſurvey and ſearch all the weirs in "ſuch rivers, that they ſhall not be very ſtraight for the "deſtruction of ſuch fry and brood, but a reaſonable wide- "neſs after the old aſſize uſed and accuſtomed: and they

" ſhall appoint under-conſervators, who ſhall be ſworn to " make like ſurvey, ſearch, and puniſhment; and they ſhall " inquire in ſeſſions, as well by their office as at the infor- " mation of the under-conſervators, of all defaults aforeſaid, " and ſhall cauſe them which ſhall be thereof indicted to " come before them, and if they be thereof convict, they " ſhall have impriſonment and fine at the diſcretion of the " juſtices; and if the ſame be at the information of an " under-conſervator, he ſhall have half the fine."

Whether the penalty is 20l. or 20s. for this offence, vide 2. Burn's Juſtice, 323.

† *Sect.* 98. By 1. Eliz. c. 17. made perpetual by 3. Car. 1. c. 4. " No perſon, of whatever ſtate, degree, or condition, " by any ways or means whatſoever, ſhall take and kill any " young brood, ſpawn, or fry, of eels, ſalmon, pike, or of " any other fiſh; nor ſhall take or kill any ſalmons or trouts " not being in ſeaſon, nor any pike or pikerel not being in " length ten inches or more, nor any ſalmon not being in " length ſixteen inches or more, nor any trout not being " in length eight inches or more, nor any barbel not being " in length twelve inches or more; nor ſhall any fiſh be " taken with any manner of net, or by any other engine or " device whatſoever, but only with a net or trammel whereof " every meſh or mark ſhall be two inches and a half broad, " angling excepted."

† *Sect.* 99. " But it is provided, that ſuch nets and other " engines as have been uſed for the taking of ſmelts, loches, " minnows, bullheads, gudgeons, or eels, may ſtill be in " all ſuch places where ſuch fiſh have been uſed to be taken " and killed, ſo that ſuch perſons do not take, kill, or de- " ſtroy with ſuch nets any other fiſh, contrary to the mean- " ing of this act."

† *Sect.* 100. " The lord-admiral of *England*, the mayor of " *London*, the lord of every leet in *England* or *Wales*, or, in " default of being preſented to the leet, the juſtices of aſſize, " &c. and all perſons lawfully intitled to have any conſer- " vation of rivers, ſtreams, or waters, are impowered to in- " quire into offences againſt this act by the oaths of twelve " men or more, and to hear and determine the ſame within " their reſpective juriſdictions; and all fines, &c. reſulting " from the ſeveral convictions, ſhall be to the uſe of ſuch " perſons as heretofore lawfully had or were intitled to the " ſame."

† *Sect.* 101. By 33. Geo. 2. c. 27. " No perſon ſhall take, " or knowingly have in his poſſeſſion either in the water or " on ſhore, or ſell, or expoſe to ſale, any ſpawn, fry, or " brood of fiſh, or any unſizeable fiſh, or fiſh out of ſea- " ſon,

" ſon, or any ſmelt not five inches long: and any perſon " may ſeize the ſame, together with the baſkets and package, " and charge a conſtable or other peace-officer with the of- " fender and with the goods, and ſhall carry them before a " juſtice, and on conviction before ſuch juſtice, the ſame " ſhall be forfeited and delivered to ſuch proſecutor, and " the offender ſhall beſides forfeit twenty ſhillings, half to " the proſecutor and half to the poor where the offence is " committed, on default, by diſtreſs, to be committed to " hard labour not exceeding three months, unleſs ſooner " paid. But the juſtice may remit any portion equal to or " within one half of the ſaid penalty."

† *Sect.* 102. By 2. Hen. 6. c. 15. " If any perſon ſhall " faſten any nets over rivers, to ſtand continually day and " night, he ſhall forfeit five pounds."

As to the SECOND PARTICULAR, *viz.* The rules for fiſhing in and near the ſea.

† *Sect.* 103. By 3. Jac. 1. c. 12. " Any perſon who ſhall " erect any new weir along the ſea-ſhore, or in any haven, " harbour, or creek, or within five miles of the mouth " thereof, or ſhall take ſpoil or deſtroy any ſpawn, fry, or " brood, of any ſea-fiſh, in any device whatſoever, ſhall for- " feit ten pounds for every offence, half to the king, half " to the informer; and if any perſon ſhall, within the diſ- " tance of the places aforeſaid, fiſh with any draw-net or " drag-net under three inches meſh, *viz.* one inch and a " half from knot to knot, except for the taking of ſmoulds " in *Norfolk* only, or with any net with canvaſs or other " engine or device, whereby the ſpawn, fry, or brood of ſea- " fiſh may be deſtroyed, ſhall forfeit the net and ten ſhil- " lings, to be levied by diſtreſs. But it is provided, that " nothing in this act ſhall reſtrain the taking of herrings, " pilchards, ſprats, or laviderian, with nets of a leſſer meſh; " and further that it ſhall not extend to *Angleſea* (5)."

(5) For the preſervation of fiſh in the Severn, ſee 30. Car. 2. ſtat. 1. c. 9. a private act.

† *Sect.* 104. By 1. Geo. 1. ſt. 2. c. 18. " Whoever ſhall " uſe at ſea upon the Engliſh coaſt any haul-net, drag-net, " or ſet-net for catching any fiſh, except herrings, pilchards, " ſprats, or laviderian, of leſs than three inches and a half " meſh, from knot to knot; or which hath a falſe or " double bottom; or ſhall put one net behind another; he " ſhall, on conviction before one juſtice, on the oath of " two witneſſes, in one month after the offence, forfeit the " ſame

" ſame and twenty pounds, half to the informer and half " to the poor, by diſtreſs, and for want of ſufficiency to be " committed for twelve months, and the nets to be burnt. " But an appeal may be made to the next ſeſſion."

† *Sect.* 105. By 1. Geo. 1. ſt. 2. c. 18. " If any perſon " ſhall bring to ſhore or expoſe to ſale any fiſh leſs than the " following ſizes from the eyes to the extent of the tail, " *viz.* brett or turbot ſixteen inches, brill or pearl fourteen; " codlin twelve; whiting ſix; baſs and mullet twelve; " ſole, plaiſe, and dab, eight; flounder ſeven; he ſhall " forfeit the fiſh to the poor, and twenty ſhillings, half to " the informer, and half to the poor, to be levied as afore- " ſaid, and for default or inſufficiency to be ſeverely " whipped, and kept to hard labour from ſix to fourteen " days. Appeal to next ſeſſions."

† *Sect.* 106. By 33. Geo. 2. c. 2. " Brett, turbot, brill, " or pearl, although under the ſame dimenſions, may be " expoſed to ſale ſo as the ſame be not ſold by retail for " above ſix-pence per pound; and if any greater price ſhall " be demanded or taken, or ſuch fiſh ſhall not be weighed " or meaſured if required, the ſame ſhall be forfeited, and " the offender ſhall pay twenty ſhillings, to be recovered, " &c. as before directed; and the money paid for the " purchaſe of ſuch fiſh ſhall be returned to the party."

† *Sect.* 107. By 9 Geo. 2. c. 33. ſ. 4. " No perſon " ſhall take, kill, or deſtroy, any lobſters on the coaſt of " *Scotland*, from the firſt of *June* to the firſt of *September*, " on pain of five pounds, on conviction before two juſ- " tices of the ſhire on the coaſt where the offence ſhall be " committed." (6)

(6) For further particulars relating to the price of fiſh within the bills of mortality, vide 10. and 11. Will. 3. c. 24. ſ. 11. 9. Ann. c. 26. 22. Geo. 2. c. 49. 29. Geo. 2. ſ. 39. 30. Geo. 2. c. 21.

As to THE THIRD PARTICULAR, *viz.* Reſpecting the importation of fiſh.

† *Sect.* 108. By 18. Car. 2. c. 2. " If any ling, herring, " cod, or pilchard, ſalmon, eels, or congers, taken by " foreigners, ſhall be imported or expoſed to ſale, any " perſon may ſeize the ſame, to be divided equally between " the informer and the poor."

† *Sect.* 109. By 1. Geo. 1. c. 18. and 9. Geo. 2. c. 33. " No fiſh taken by or received of any foreigner, except " proteſtants inhabiting in *England*, ſhall be imported " (except

" (except eels, ſtockfiſh, anchovies, ſturgeon, botargo, " or caveao, lobſter, and turbot), on pain of one hun- " dred pounds, and the maſter of the veſſel fifty pounds, " half to the poor, and half to the informer, who ſhall " ſue in twelve months in any of the courts at *Weſt-* " *minſter.*" (7)

(7) For the law reſpecting the ſalting of fiſh, vide 2. Burn's Juſtice 112 to 128, and for the Britiſh herring fiſhery, vide 28. Geo. 2. c. 14.

SEVENTHLY, As to BACON and PORK.

† *Sect.* 110. By 18. Car. 2. c. 2. " If any beef, pork, " or bacon, for ſale, ſhall be imported, they may be ſeized, " and ſhall be forfeited, one half to the poor, and the other " to the perſon who ſhall ſeize the ſame: and by the " 20. Car. 2. c. 7. thoſe who ſhall ſeize the ſame are indem- " nified."

† *Sect.* 111. By 12. Car. 2. c. 4. ſ. 11. " When beef, " pork, and bacon, do not exceed, *viz.* beef five pounds " the barrel, pork ſix pounds ten ſhillings the barrel, " and bacon ſixpence a pound in price, at the ports " from whence they are laden, and at the time of their " lading, the ſame may be ſhipped, carried out, and ex- " ported."

† *Sect.* 112. By 22. Car. 2. c. 13. ſ. 4. " Beef, pork, " and bacon, may be exported by native or foreigner, al- " though the ſame do exceed the prices above-mentioned at " the ports, &c. at the time of their lading."

† *Sect.* 113. By 3. Will. and Mary, c. 8. " All ſorts of " beef, pork, or hogs-fleſh, may be exported into any part " of the world in amity with the crown, free from any " cuſtom or impoſition whatſoever."

† *Sect.* 114. By 4. Will. and Mary, c. 5. ſ. 2. " Four- " pence ſhall be paid for every pound of bacon imported." Vide 3. and 4. Will. and Mary, c. 8.

† *Sect.* 115. By 5. Will. and Mary, c. 2. ſ. 4. " The " ſaid ſum ſhall be paid from the firſt day of the ſeſſion."

† *Sect.* 116. And by 3. Geo. 2. c. 20. ſ. 16. " Beef or " pork ſalted with foreign ſalt ſhall receive on exportation " one ſhilling and ſixpence *per* barrel."

EIGHTHLY,

EIGHTHLY, As to HAY and STRAW.

For the regulation of the haymarket at Weſtminſter, vide 8. and 9. Will. 3. c. 17.

† *Sect.* 117. It is enacted by 2. Will. and Mary, ſ. 2. c. 8. ſ. 16. "That every truſs of old hay brought or offered "to be ſold within the bills of mortality, between "firſt *Auguſt* and firſt *June*, ſhall contain and be the full "weight of fifty-ſix pounds at leaſt; and that every truſs "of hay brought or offered to be ſold, as aforeſaid, between "firſt *June* and firſt *Auguſt*, being new hay of that ſum-"mer's growth, ſhall be and contain the full weight of "ſixty pounds, and old hay of any former year's growth, "the weight of fifty-ſix pounds as aforeſaid; and if any "hay ſhall be brought, or offered to be ſold, as aforeſaid, "whereof any truſs ſhall be of leſs weight than aforeſaid, "the perſon ſo bringing or offering ſuch hay to be ſold, "ſhall forfeit for every truſs, not being the full weight, "eighteen-pence."

† *Sect.* 118 By 31. Geo. 2. c. 40. "All ſtraw which "ſhall be ſold or delivered in, or brought to, or expoſed "to ſale in *London*, or within the bills of mortality, ſhall "be ſold and delivered in bundles or truſſes, firmly bound "up, and of the full weight of thirty-ſix pounds of good "and ſound ſtraw, excluſive of any other thing which ſhall "be put therein; and whoever ſhall bring into, or expoſe "to ſale, in *London*, or within the bills of mortality, or in "any place within the diſtance of thirty miles from the "extent of any part of the limits of the ſaid bills of mor-"tality, when ſtraw ſhall be ſold in bundles or truſſes, any "bundle or truſs of ſtraw which ſhall be of leſs weight "than thirty-ſix pounds of good and ſound ſtraw, or which "ſhall be in the inſide of a different quality or goodneſs "from which on the outſide it ſhall appear to be, ſhall "forfeit twenty-pence for every offence, and the ſum of "one ſhilling for every bundle or truſs of ſtraw."

† *Sect.* 119. By 31. Geo. 2. c. 40. ſ. 2. and 3. "Every "truſs of hay ſhall be made up in like manner as the ſtraw "aforeſaid, and ſuch hay only as ſhall be good ſhall "be deemed and taken to be the hay which is to make up "the weight every truſs of hay by law ought to be; and "alſo the pair of bands with which any truſs of hay "ſhall be bound, ſhall not exceed the weight of five pounds, "upon pain of forfeiting for every offence one ſhilling."

† *Sect.* 120. By 31. Geo. 2. c. 40. ſ. 4. "Whoever ſhall "bind hay contrary to the directions of this act, ſhall for-"feit three-pence for every bundle or truſs of hay or ſtraw,

"if

" if objected to within twenty-four hours by the proprietor."

† *Sect.* 121. By 31. Geo. 2. c. 40. ſ. 5. " No perſon " who ſhall act as a common ſaleſman in ſelling hay or " ſtraw for any other perſon for gain or reward, or by " commiſſion in *London*, or within the bills of mortality, " ſhall directly or indirectly buy any hay or ſtraw on his " own account, other than what he ſhall purchaſe to ſpend " for his own uſe; and if any ſuch perſon ſhall buy any " hay or ſtraw on his own account to ſell again, or ſhall " ſell in *London*, or within the bills of mortality, any hay " or ſtraw which ſhall have been brought by him on his " account, ſhall forfeit one ſhilling for every truſs."

N. B. For the regulation of the markets with reſpect to the ſale of theſe articles, vide the 6, 7, 8, 9, and 10 ſections of the act.

NINTHLY, As to FRUIT.

† *Sect.* 122. By 1. Ann. ſtat. 1. c. 15. ſ. 1. " The meaſure commonly called *water* meaſure ſhall be round, and " in diameter eighteen and a half inches within the hoop, " and eight inches deep, and no more, and ſo in proportion for any greater or leſſer meaſure; and every ſuch " meaſure by which apples and pears are ſold, ſhall be " heaped as uſually; and whoever ſhall buy or ſell apples or pears by or with any other meaſure, ſhall forfeit " ten ſhillings for every offence, half to the informer, and " half to the poor, on conviction by one witneſs, before " one magiſtrate, to be levied by warrant of diſtreſs. But " this act ſhall not extend to meaſures ſealed and allowed " by the Company of Fruiterers of *London*, which are uſed " in the ſaid city, or within three miles thereof."

† *Sect.* 123. By 10. Geo. 2. c. 27. " Upon all apples " imported into *Great Britain* ſhall be paid, over and above " the duties already impoſed, an additional duty of two " ſhillings a buſhel, and ſo for any greater or leſs quantity, " to be paid down in ready money by the importers at the " time of landing the ſame, which duty ſhall be applied in " the like manner as other duties upon the ſame article."

N. B. By 8. Geo. 1. c. 20. there was an additional duty of two ſhillings a buſhel, continued for ſeven years by 11. Geo. 1. c. 7.

TENTHLY, As to HONEY AND WAX.

† *Sect.* 124. It is enacted, by 23. Eliz. c. 8. " That " whoever, in the making and melting of wax, ſhall mix or " mingle the ſame with roſin, tallow, turpentine, or any " other deceitful thing, to the intent to ſell the ſame, or to " offer the ſame to be ſold or uttered for wax, ſhall forfeit " the ſame; and if the ſame ſhall happen to be ſold before " the corruption is diſcovered, the melter, mingler, or " cor-

" corrupter, or the cauſer or procurer thereof, ſhall forfeit " for every pound two ſhillings, half to the queen, half to " the party decerned, if he will ſue for it, or any other " perſon that will ſue for the ſame in any of the queen's " courts of record."

† *Sect.* 125. By 23 Eliz. c. 8. ſ. 2. " Every melter and " maker-up of unwrought wax ſhall have a ſtamp of the " breadth of ſixpence, wherein two letters ſhall be plainly " graven, ſignifying his name and ſurname, with which " every piece of wax ſhall be printed or ſtamped triangle " in three places, upon the outſide of the upper part of " every piece ſo melted and caſt, on pain to forfeit the " value of every piece of cake ſold, or offered to be ſold, " and not ſo ſtamped or marked."

† *Sect.* 126. By 23. Eliz. c. 8. ſ. 3. " Whoever ſhall " melt, mix, work, or ſell any wrought wax, or any ſtuff " or wares wrought with wax, ſhall have a ſtamp or ſeal " ſet to his work, that it may be known who were the " workers thereof, on pain of forfeiting the ſame, half to " the queen or party deceived, &c. as before-mentioned."

† *Sect.* 127. By 23. Eliz. c. 8. ſ. 3. " All barrels, kil- " derkins, and firkins, filled with honey by the maker and " filler, ſhall be marked with two letters ſtanding for his " name and ſurname, each letter of an inch and a half in " length at leaſt, burnt upon the head of the caſk with a " hot iron, upon pain of ſix ſhillings and eight-pence for " every package ſold, or offered to be ſold, and not ſo " marked."

† *Sect.* 128. By 23. Eliz. c. 8. ſ. 4. " Whoever ſhall fill " and ſell, or cauſe to be filled and ſold, or offered to be " ſold, any barrel, kilderkin, or firkin, with honey, for " or in the name of a barrel, kilderkin, or firkin, containing " leſs than thirty-two wine gallons the barrel, ſixteen wine " gallons the kilderkin, and eight wine gallons the firkin, " ſhall forfeit for every half gallon ſo lacking, five ſhillings. " And whoever ſhall corrupt the honey ſo ſold with any " deceitful mixture, ſhall forfeit the barrel or veſſel, and the " honey therein, to be divided between the queen and the " proſecutor."

† *Sect.* 129. By 23. Eliz. c. 8. ſ. 5. " This act ſhall not " extend to perſons ſelling the wax of their own bees, in " ſmall pieces in open market, nor to ſervants employed by " their maſters in mingling, &c. ſo as they will confeſs the " ſame."

† *Sect.*

† *Sect.* 130. And by 23. Eliz. c. 8. ſ. 5. "Whoever "ſhall counterfeit any of the ſtamps or marks above-men- "tioned, or ſhall uſe the marks of another, ſhall forfeit five "pounds, to be recovered and divided as aforeſaid, and for "non-ſufficiency of payment to be ſet on the pillory in "the next market town, and ſuffer three months impriſon- "ment."

ELEVENTHLY, As to COALS.

† *Sect.* 131. By 12. Ann. ſtat. 2. c. 17. "The coal- "buſhel ſhall be made round with a plain and even bottom, "nineteen and one half inches in diameter, and to contain "one *Wincheſter* buſhel, and one quart of water; a braſs "ſtandard of which buſhel ſhall be kept in the exchequer."

† *Sect.* 132. By 16. and 17. Car. 2. c. 2. "All ſea-coal "brought into the *Thames* ſhall be ſold by the chaldron, "containing thirty-ſix buſhels heaped up, and according to "the buſhel ſealed for that purpoſe at *Guildhall*, and ſo "for a greater and leſſer quantity; and all other ſorts of "coals, ſold by weight and not by meaſure, ſhall be ſold "after the proportion of an hundred and twelve pounds "*averdupois* to the hundred weight, upon pain of forfeiture, "and of double the value, on conviction by one juſtice "where the offence ſhall be committed, half to the proſe- "cutor, and half to the poor, or to the ſurveyor of the "highways, as the magiſtrate ſhall direct."

† *Sect.* 133. By 17. Geo. 2. c. 35. "Any three juſtices "ſhall be empowered to ſet the prices of ſea-coals, as they, "from time to time, ſhall judge reaſonable, allowing a "competent profit to the retailer, beyond the price paid by "him to the importer, &c., and if any engroſſer or retailer "of ſuch coals ſhall refuſe to ſell as aforeſaid, the juſtices "taking a conſtable may enter the wharf, &c. and ſell the "ſame, returning the produce to ſuch engroſſer or retailer, "deducting the charges: but no intereſted perſon ſhall be "engaged in ſetting ſuch price as aforeſaid." (8)

(8) For the regulation reſpecting coals within the bills of mortality, vide 3. Geo. 2. c. 26. 11. Geo. 2. c. 15. 19. Geo. 2. c. 35. 20. Geo. 2. c. 49. 23. Geo. 2. c. 26. 32. Geo. 2. c. 27. 7. Geo. 3. c. 23. 21. Geo. 3. c. 24.

CHAPTER THE EIGHTY-FIRST.

OF BARRATRY.

IN treating of barratry, I ſhall conſider, Minſhew. Dufreſne. Spelman.

1. Who ſhall be ſaid to be a barrator.

2. In what manner ſuch an offender is to be proceeded againſt.

3. To what puniſhment he is liable.

As to THE FIRST POINT, *viz.* Who ſhall be ſaid to be a barrator.

Sect. 1. It ſeems, that a barrator is a common mover, exciter, or maintainer of ſuits or quarrels, either in courts, or in the country. Dalt. p 38. Co. Lit. 368. 8. Coke 36. Cro Jac. 527.

Sect. 2. And it is ſaid not to be material, whether the courts wherein ſuch ſuits are commenced be of record or not, or whether ſuch quarrels in the country relate to a diſputed title of poſſeſſions or not; but that all kinds of diſturbances of the peace, and the ſpreading of falſe rumours and calumnies, whereby diſcord and diſquiet may grow among neighbours, are as proper inſtances of barratry, as the taking or keeping the poſſeſſion of lands in controverſy. Co. Lit. 368. 8. Coke 36.

Sect. 3. But it hath been holden, that a man ſhall not be adjudged a barrator in reſpect of any number of falſe actions brought by him in his own right. However, if ſuch actions be merely groundleſs and vexatious, without any manner of colour, and brought only with a deſign to oppreſs the defendants, I do not ſee why a man may not as properly be called a barrator for bringing ſuch actions himſelf, as for ſtirring up others to bring them. 1 R Abr. 356. 3 Modern 98. 8. Coke 36.

Sect. 4. But it ſeems, that an attorney is in no danger of being judged guilty of an act of barratry, in reſpect of 3. Mod. 97, 98.

his maintaining another in a groundleſs action, to the commencing whereof he was no way privy.

8. Coke 36.

Sect. 5. Alſo it ſeems clear, that no one can be a barrator in reſpect of one act only; for every indictment for ſuch crime muſt charge the defendant with being *communis barractator*.

2. Rolle 39. See chap. 1. ſect.

Sect. 6. It ſeems to have been holden, that a *feme covert* cannot be indicted as a common barrator; but this opinion ſeems juſtly queſtionable; for ſince a *feme covert* is as capable of exciting quarrels, in the frequent repetition whereof the notion of barratry ſeems to conſiſt, as if ſhe were ſole, why ſhould ſhe not as properly be indictable for it?

As to THE SECOND POINT, *viz.* In what manner offenders of this kind are to be proceeded againſt.

Sect. 7. It is enacted by 34. Edw. 3. c. 1. "That in "every county ſhall be aſſigned for the keeping of the "peace one lord, and with him three or four of the moſt "worthy of the county, &c. and that they ſhall have "power to reſtrain offenders, rioters, and all other barra-"tors, and to purſue, arreſt, take, and chaſtiſe them, accor-"ding to their treſpaſs or offence; and ſo cauſe them to "be impriſoned and duly puniſhed according to the law "and cuſtoms of the realm, and according to that which "to them ſhall ſeem beſt to do by their diſcretions and "good adviſement, &c."

Con. B. 2. c. 8. ſ. 38, 39. Yelverton 46. 2. Rolle 151.

Sect. 8. It ſeemeth from theſe words, that juſtices of peace, as ſuch, have cognizance of barratry without any other commiſſion; *ſed quære*, for the contrary opinion ſeems to have been holden in *Rolle's Reports*.

1. Modern 288. 1 Sid. 282. C. Jac. 526.

Sect. 9. However, it ſeems clear, that no general indictment of this kind, charging the defendant with being a common oppreſſor, and diſturber of the peace, and ſtirrer-up of ſtrife among neighbours, is good, without adding the words *communis barractator*, which is a term of art appropriated by the law to this purpoſe.

(*a*) 2. R. Ab. 79. 82. C. Jac. 527. C. Car. 340. 2. Keb. 409, 410. C. Eliz. 148.

Sect. 10. (*a*) Alſo it ſeemeth to be certain, that an indictment of barratry concluding *contra formam ſtatuti* is good, though no ſtatute be made directly againſt it, but only for the puniſhment of it, ſuppoſing it an offence at common law.

† *Sect.*

Sect. 11. (*a*) Alſo it hath been holden, that an indictment of this kind may be good, without alledging the offence at any certain place, becauſe from the nature of the thing, conſiſting in the repetition of ſeveral acts, it muſt be intended to have happened in ſeveral places; for which cauſe it is ſaid, that a trial ought to be by a jury from the body of the county.

(*a*) 2. Keb. 410. C. Eliz. 195. Con. Lat. 194. 2. Hale 180. Palmer 450. 1. Rolle 295.

Sect. 12. (*b*) But it hath been reſolved, that ſuch an indictment is not good, without concluding *contra pacem, &c.*; for this is an eſſential part of it.

(*b*) C. Jac. 527.

Sect. 13. (*c*) Alſo it ſeemeth to be a ſettled practice not to ſuffer the proſecutor to go on in the trial of an indictment of this kind, without giving the defendant a note of the particular matters which he intends to prove againſt him; for otherwiſe it will be impoſſible to prepare a defence againſt ſo general and uncertain a charge, which may be proved by ſuch a multiplicity of different inſtances.

(*c*) 5. Mod. 18. 1. Ld. Ray. 490. 12. Mod. 516. 2. Atk. 340.

AS TO THE THIRD POINT, *viz.* In what manner offenders of this kind are to be puniſhed.

Sect. 14. It is ſaid, that if they be common perſons, they are to be fined and impriſoned, and bound to their good behaviour; and if they be of any profeſſion relating to the law, that they ought alſo to be farther puniſhed by being diſabled to practiſe for the future.

Hutton 104. Vide 1. Dan. Ab. 111. 113.

CHAPTER THE EIGHTY-SECOND.

OF USURY.

OFFENCES under the degree of capital, more immediately againſt the ſubject, not amounting to an actual diſturbance of the peace, which may be committed by private perſons without any relation to an office, and which are neither infamous nor groſsly ſcandalous, and more immediately affect the intereſts of particular perſons, ſeem to be reducible to the following heads.

1. Uſury.

2. Maintenance.

3. The offence of buying or ſelling pretended titles.

In treating of USURY, I ſhall conſider,

1. What ſhall be deemed uſury.

2. How it is reſtrained by common law.

3. How by ſtatute.

As to THE FIRST GENERAL POINT, *viz.* What ſhall be deemed uſury.

Sect. 1. It ſeems that uſury, in a ſtrict ſenſe, is a contract upon the loan of money to give the lender a certain profit for the uſe of it, upon all events, whether the borrower make any advantage of it, or the lender ſuffer any prejudice for the want of it, or whether it be repaid on the day appointed, or not. Wood's Inſt. b. 3. p. 425. 3. Inſt. 151. B. Uſury, 12. 2. Strange 816. 1243. 4. Com. 156. 2. Com. 455.

Sect. 2. And in a larger ſenſe it ſeemeth, that all undue advantages taken by a lender againſt a borrower come under the notion of USURY, whether there were any contract in relation thereto, or not; as where one in poſſeſſion of land, made over to him for the ſecurity of a certain debt, retains his poſſeſſion after he hath received all that is due from the profits of the land. Gibſ. 1070. Cowper 793.

2. R. Abr. 801. 26. Edw. 3. 71. 2. Inſt. 89. 5. Rep 69. Cowper 113.

Sect. 3. But it hath been reſolved, that an agreement to pay double the ſum borrowed, or other penalty on the non-payment of the principal debt at a certain day, is not uſurious, becauſe it is in the power of the borrower wholly to diſcharge himſelf, by repaying the principal according to the bargain.

As to THE SECOND GENERAL POINT, *viz.* How uſury is reſtrained by the common law.

3. Inſt. 151. 2 R. Abr. 800. 2. Inſt. 506. Palm. 293. Temp. Hardwicke 420.

Sect. 4. It is ſaid, that anciently it was holden to be abſolutely unlawful for a chriſtian to take any kind of uſury, and that whoſoever was guilty of it, was liable to be puniſhed by the cenſures of the Church in his life-time; and that if after death any one was found to have been an uſurer while living, all his chattels were forfeited to the king, and his lands eſcheated to the lord of the fee.

2. Ventris 42. 2. Vern. 145. Eq. Ca. Ab. 288.

Sect. 5. Alſo it ſeemeth to have been the opinion of the makers of ſome late acts of parliament, as 5. Edw. 6. c. 20. 13. Eliz. c. 8. ſ. 5. and 21. Jac. 1. c. 17. ſ. 5. that all kinds of uſury are contrary to good conſcience.

2. R. Abr. 801. 1. R. Abr. 18. 2. Roll. 239. Palm. 293.

Sect. 6. And agreeably hereto it ſeemeth formerly to have been the general opinion, that no action could be maintained on any promiſe to pay any kind of uſe for the forbearance of money, becauſe that all ſuch contracts were thought to be unlawful, and conſequently void.

1. R. Abr. 25. 2 R. Abr. 782. 802. Winch. 114. 1. Ven. 198. 3. Keble 15. C. Car. 273. Exod. c. xxii. v. 25. Levit. c. xxv. v. 36, 37. Deuter. c. xxiii. v. 19, 20.

Sect. 7. But it ſeems to be generally agreed at this day, that the taking of reaſonable intereſt for the uſe of money is in itſelf lawful, and conſequently that a covenant or promiſe to pay it, in conſideration of the forbearance of a debt, will maintain an action; for why ſhould not one who has an eſtate in money be as well allowed to make a fair profit of it, as another who has an eſtate in land; and what reaſon can there be, that the lender of money ſhould not as well make an advantage of it as the borrower? Neither do the paſſages in the *Moſaical* law, which are generally urged againſt the lawfulneſs of all uſury, if fully conſidered, ſo much prove the unlawfulneſs, as the lawfulneſs of it; for if all uſury were againſt the moral law, why ſhould it not be as much ſo in reſpect of foreigners, of whom the Jews were expreſsly allowed to take it, as in reſpect of thoſe of the ſame nation, of whom alone they were forbidden to receive it? From whence it ſeems clearly to follow, that the prohibition of it to that people was merely political, and conſequently doth not extend to any other nation.

As

As to THE THIRD GENERAL POINT, *viz.* How uſury is reſtrained by ſtatute,

I ſhall conſider,

1. How far perſons in general are reſtrained from the offence of uſury.

† 2. How far the *Bank of England* may borrow money at more than the legal rate of intereſt.

† 3. At what rate of intereſt monies may be borrowed on *Plantation ſecurities*.

† 4. What rate of *brokerage* is allowed for raiſing money.

As to THE FIRST POINT, *viz.* How far perſons in general are reſtrained from the offence of uſury.

Sect. 8. By 12. Ann. c. 16. "No perſon whatſoever "ſhall, upon any contract, take, directly or indirectly, for "loan of any money, wares, merchandize, or other com- "modities whatſoever, above the value of five pounds, for "the forbearance of one hundred pounds for a year, and ſo "after that rate for a greater or leſſer ſum, or for a longer "or ſhorter time."

No more than five *per cent.* ſhall be taken for the loan of money.

Sect. 9. And by 12. Ann. c. 16. it is enacted, "That "all bonds, contracts, and aſſurances whatſoever, for pay- "ment of any principal, or money to be lent, or covenanted "to be performed upon, or for any uſury, whereupon or "whereby there ſhall be reſerved or taken above the rate "of five pounds in the hundred, as aforeſaid, ſhall be "utterly void."

Contracts on which more than five *per cent.* is reſerved or taken, are void.

Sect. 10. And by 12. Ann. c. 16. ſ. 2. "All and every "perſon or perſons whatſoever, which ſhall upon any con- "tract take, accept, and receive, by way or means of any "corrupt bargain, loan, exchange, chevizance, ſhift, or "intereſt of any wares, merchandize, or other thing or "things whatſoever, or by any deceitful way or means, or "by any covin, engine, or deceitful conveyance, for the "forbearing or giving day of payment for one whole year, "of and for their money or other thing, above the ſum of "five pounds, for the forbearing of one hundred pounds "for a year, and ſo after that rate for a greater or leſſer "ſum, or for a (*a*) longer or ſhorter term, ſhall forfeit and

Whoever ſhall uſuriouſly take more than five *per cent.* ſhall forfeit treble value.
3. Atk. 154.
3. Keble 259, 260.
1. Vent. 253.
3. Wiſ. 250.

(*a*) C. Jac. 25. Moor 614. 2, Leo. 38. Noy 41. C. Car. 283. 4. Leonard 43. C. Eliz. 20.

" lose for every such offence the treble value of the money, " wares, merchandize, and other things so lent, bargained, " exchanged, or shifted."

1. Atk. 340. 1. Ves. 142. The expositions which were made of the former statutes of usury being equally applicable to this, which is penned almost in the very same words, I shall, in taking notice of the principal of them, endeavour to shew,

† 1. In what cases the usurious contract is void.

† 2. In what cases the usurer is liable to the penalties.

† 3. In what way the offender may be proceeded against.

† 4. What is required in the pleadings.

† 5. What evidence may be given in cases of usury.

† As to the first particular, *viz.* In what cases an usurious contract is void.

Dalis. 22. Con. Ray. 197. † *Sect.* 11. A contract made before the statute is no way within the meaning of it, and therefore it is still lawful to receive six *per cent.* in respect of any such contract.

Bodily *v.* Bellamy, 2. Burr. 1094. † *Sect.* 12. A bond given at *Calcutta* in the *East-Indies*, where both parties reside at the time, on which nine *per cent.* is reserved, is not within the statute.

Salkeld 344. 2. And. 121. Moor 752. C. Jac. 32, 33. Yelverton 47. 2. Burr. 1077. 7. Modern 118. 2. Strange 1249. L. Nisi P. 27. *Sect.* 13. A bond made to secure a just debt, payable with lawful interest, shall not be avoided by reason of a corrupt agreement between the obligors, to which the obligee was no way privy; as where *A.* being indebted to *B.* in a hundred pounds, agrees to give him thirty pounds for the forbearance of that hundred pounds for a year, and gives him a bond of sixty pounds for payment of the thirty pounds, and for the payment of the hundred pounds enters into a bond of two hundred pounds together with *B.* for the payment of a true debt of one hundred pounds due from *B.* to *C.*

Lowe *v.* Waller, Dougl. 737. † *Sect.* 14. But it is now determined, that a bill of exchange given upon a usurious consideration is void, even in the hands of an indorsee for valuable consideration, without notice of the usury.

Sect.

Sect. 15. The receipt of higher intereſt than is allowed by the ſtatute, by virtue of an agreement ſubſequent to the firſt contract, does not avoid an aſſurance fairly made, and agreeable to the ſtatute, but only ſubjects the party to the forfeiture of treble value; for the words are, "That all "aſſurances for the payment of any principal, &c. where-"upon or whereby there ſhall be reſerved or *taken* above "the rate of five pounds in the hundred, &c. ſhall be "utterly void."

Pollard *v.* Scholey, Cro. Eliz. 20. Ray. 191. 4. Burr. 22. 53.

† *Sect.* 16. So alſo where *A.* ſold goods at three months credit, but ſtipulated that if the money was unpaid, the vendee ſhould allow him a halfpenny an ounce for every month until the debt was diſcharged, which exceeded the legal rate of intereſt, yet the contract being a *bonâ fide* ſale, and the ſubſequent agreement according to the uſage in that particular branch of trade, it was not uſurious; but it would have been otherwiſe if the ſale had been merely colourable, to cover the loan and evade the ſtatute.

Floyer *v.* Edwards, Cowp. 112.

† *Sect.* 17. So where *A.* was fairly indebted to *B.* in one thouſand one hundred and twenty-five pounds, and on *A.* deſiring time to pay it, *B.* inſiſted that one hundred and fifty pounds ſhould be added to the debt, as he would have nothing to do with intereſt, and *A.* accordingly gave him five acceptances for theſe two ſums. payable within fourteen months, it was held that the *bonâ fide* debt ſubſiſted unimpeached by the ſubſequent uſurious tranſaction.

Gray *v.* Fowler, 1 H. Bl. Rep. 462.

† *Sect.* 18. So in an action for uſury, where it was proved to be the cuſtom to diſcount bills in *London* for perſons in the county, and to charge on ſuch bills the uſual diſcount of intereſt of five *per cent.* and alſo five ſhillings *per cent.* on the groſs ſum, as commiſſion to anſwer the extraordinary expences of clerks, &c. kept for this buſineſs, it was adjudged not to be uſury.

Winch *v.* Fen, Sett. B. R. Hilary Term, 1786. See 2. Term Rep. 52 notis.

† *Sect.* 19. So where a bill of exchange indorſed over is not duly paid, the indorſee may charge the indorſer with intereſt, exchange, and other incidental expences, beyond the amount of five *per cent.* if ſuch charges are reaſonable, warranted by uſage, and not made a colour for uſury.

Auriol *v.* Thomas, 2. Term Rep. 52.

† *Sect.* 20. But if a ſum of money is lent upon an agreement to pay legal intereſt, and a premium over and above is paid when the money is advanced, the ſecurity is void, although ſuch premium do not of itſelf exceed the legal intereſt, but the penalty is not incurred till more than legal intereſt is actually received.

Fiſher *qui tam v.* Beaſley, Dougl. 235.

Sect.

Tanfield *v.* Finch, C. El. 27.
Richards *v.* Brown, Cowp. 728.
Confirmed by Ld. Thurlow, Hil. 21. Geo. 3. Brown's Rep. Chan. 93. Ld. Irnham *v.* Child.

Sect. 21. The grant of an annuity for lives not only exceeding the rate allowed for intereſt, but alſo exceeding the known proportion for contracts of this kind, in conſideration of a certain ſum of money, is not within the meaning of the ſtatute, unleſs there were ſome underhand bargain for the ſecurity of the repayment of the principal or conſideration-money.

Richards *v.* Brown, Cowp. 770.

† *Sect.* 22. Therefore where *A.* applied to *B.* to borrow ſix hundred pounds, and *B.* agreed to lend it him, and actually advanced two hundred pounds of the money, on a depoſit of certain ſecurities, but when *A.* applied for the remaining four hundred pounds, *B.* by falſely pretending that he had not the money himſelf, but muſt get it from a friend, who, he ſaid, never lent money but upon annuity at ſix years purchaſe, which was conſented to and given by *A.* accordingly, and *B.* took five *per cent.* procuration-money, this loan, though in the ſhape of an annuity, was held uſury.

Murray *v.* Harding, 3. Will. 390.

† *Sect.* 23. But where the loan was in the form of an annuity, and there was a clauſe in the deed, that the borrower might repay the ſum given for the annuity at a future period, the Court held it not uſury, although the clauſe ſeemed to make the ſum advanced the loan, and the annuity the intereſt; for the repayment was caſual, and depended on the borrower himſelf, ſo that it was not in the lender's power to have his money at all events.

2. Roll. 48.
2. Black. 863.
1. Lev. 54.
2. Sid. 27.
1. Atk. 340.

Sect. 24. No contract is uſurious by which the lender runs the hazard of loſing all his money, both principal and intereſt; as where on the loan of a certain ſum for a year, for the victualling of a ſhip, it is agreed that if the ſhip return, the lender ſhall have ſo many thouſand fiſhes, at ſuch a rate, which exceeds the intereſt allowed by the ſtatute, and if the ſhip never return, or if it periſh by unavoidable caſualties of ſea, fire, or enemies, that then he ſhall have nothing.

Shower's Rep. 8.

Sect. 25. So alſo where on the loan of thirty pounds a bond is given for the payment of a hundred pounds, on the marriage of a daughter of one of the parties; "provided, "that if either of them ſhould die before, that then nothing "ſhould be paid."

Cheſterfield *v.* Janſen, 1. Atk. 339.

† *Sect.* 26. So a loan of five thouſand pounds, to be paid ten thouſand pounds on the death of *A.* in the life-time of

of *B.* is not a uſurious contract within 12. Ann. c. 16. for in this caſe, if the contingency happen one way, the whole money is loſt.

† *Sect.* 27. So where *A.* lent one hundred pounds to *B.* for four years without intereſt, but *B.* agreed to find the daughter of *A.* with meat and drink for that time, and alſo to take her into partnerſhip, ſhe to pay a moiety of the charges and loſſes of the buſineſs, and to receive half of the profits, it was held not to be uſury, although the pecuniary advantages gained by *A.* might exceed five *per cent.* Moniſet *v.* King, 2. Burr. 891.

† *Sect.* 28. But if the borrower of money give a bond for the principal and intereſt at five *per cent.* and covenant at the ſame time alſo to pay to the lender a certain portion of the profits of a trade carried on by him in partnerſhip with another perſon, this is an uſurious contract, and the obligee cannot recover on the bond; for though he was to gain by the profits, he was not to ſtand to the loſſes of the trade. Morſe *v.* Wilſon, 4. Term Rep. 353.

Sect. 29. But it is clear, that if the intereſt only be hazarded on ſuch a contract, and the whole principal ſecured, the whole is uſurious. 3. Keble 304. Said to be good law, 1. Atk. 341. Cro. Jac. 507.

Vide C. Eliz. 741.

Sect. 30. Alſo it hath been reſolved, that an agreement to pay more than the lawful intereſt for the loan of a certain ſum at ſuch a day if *A. B.* ſhall be then alive, and if he ſhall be dead then to pay ſuch a ſum which is leſs than the principal, is void by the ſtatute; for if ſuch a contingency would exempt the caſe out of the ſtatute, by the ſame reaſon twenty lives might be added, and the ſtatute wholly evaded. Button *v.* Durnham, Cro. Eliz. 642. Clayton's Caſe, 5. Co. 70.

† *Sect.* 31. So alſo if the contingency be on a young and healthy perſon dying within three months, this ſhall be deemed uſurious; for being ſo ſlight, it appears to be a mere evaſion. Richards *v.* Brown, Cowp. 770.

Sect. 32. An aſſurance made in purſuance of a fair agreement for ſuch intereſt as is allowed by the ſtatute, ſhall not be avoided by the fault of the ſcrivener, who draws it up in ſuch a manner as to bring it within the expreſs letter of the ſtatute. C. Jac. 677. 2. Roll. 414. Het. 11. 2. Ven. 83. 3. Will. 396.

Sect. 33. As where the parties agree, that five pounds ſhall be paid for the loan of a hundred pounds for a year, and the ſcrivener, in drawing the bond for it, doth, without the knowledge of the parties, who are illiterate perſons, make the five pounds payable at the end of half a year. Hard. 418. 2. Mod. 307.

Sect.

Sect. 35. So where on the fair loan of a hundred pounds agreed to be paid with common intereſt, a mortgage is made for the hundred pounds, with a proviſo, that it ſhall be void on payment of one hundred and five pounds at the end of one year, without any covenant for the mortgagor to take the profits till default be made of payment, ſo that in ſtrictneſs the mortgagee is intitled both to the intereſt and profits.

Le Grange *v.* Hamilton, 4. Term Rep. 613. S. C. 2. H. Bl. Rep. 144.

† *Sect.* 36. So alſo if a bond be conditioned for the payment of one hundred pounds by quarterly payments of five pounds each, and intereſt at five *per cent.* this ſhall not be rendered a uſurious contract by the indorſement of a memorandum thereon, "that at the end of each year *the year's* "*intereſt due* ſhall be added to the principal, and *then* the "twenty pounds received in the courſe of the year deducted, "and the balance remain as the principal."

Murray *v.* Harding, 3. Wilſ. 390. 2. Bl. Rep. 859.

† *Sect.* 37. So if *A.* for one hundred and twenty pounds grant an annuity of twenty pounds out of a living, with a promiſe of redemption in five years, and give bond for the performance, this is not uſury, although the agent in drawing the deed ſtate that it was *a loan* of money.

5. Co. 69. C. Jac. 509. Cowper 113. 2. Bur. 715. C. Eliz. 643. 1. Lut. 464. 2. Bur. 891. 1 Atk. 342. 2. Atk. 351. 5. Co. 69. See Mo. 397. 2. And. 16. 1. Atk. 350. Cowper 794. 2. Str. 1243.

Sect. 38. The reſervation of a greater ſum than is allowed by the ſtatute for intereſt, upon the non-payment of the principal at the end of the year, is not uſurious within the ſtatute, becauſe it is in the power of the borrower to avoid the payment of the money ſo reſerved, by paying the principal at the day appointed; yet it ſeemeth clear, that if it were originally agreed, that the principal money ſhould not be paid at the time appointed, and that ſuch clauſe was inſerted only with an intent to evade the ſtatute, the whole contract is void; for the conſtruction of caſes of this nature muſt be governed by the circumſtances of the whole matter, from which the intention of the parties will appear in the making of the bargain, which, if it was in truth uſurious, is void, however it may be diſguiſed by a ſpecious aſſurance.

Tate *v.* Wellings, 3. Term Rep. 531.

† *Sect.* 39. Therefore the loan of money produced by the ſale of ſtock, on an agreement that the borrower ſhall replace this ſtock on a certain day, *or repay the money* on a ſubſequent day with ſuch intereſt in the mean time as the ſtock itſelf would have produced, is not uſurious, though the intereſt exceed five *per cent.* unleſs the tranſaction be colourable, and a mere device to obtain more than legal intereſt.

† *Sect.*

Sect. 40. It is not (*a*) material whether the payment both of the principal and alſo of the uſurious intereſt be ſecured by the ſame (*b*) or by different conveyances, but that all writings whatſoever for the ſtrengthening ſuch a contract are void.

(*a*) C Jac. 252. 508. 2. Roll. 48. 2. Lev. 7. 8.
(*b*) Lutw. 273. 466.

Sect. 41. A contract reſerving to the lender a greater advantage than is allowed by the ſtatute, is equally within the meaning of it (*c*), whether the whole be reſerved by way of intereſt, or in part only under that name, and in part by way of rent for a houſe, let at a rate plainly exceeding the known value.

(*c*) C. Jac. 440.

† *Sect.* 42. But where *A.* agrees to pay *B.* for the purchaſe of two houſes the ſum of 430l. 10s. and that 200l. of the money ſhould be paid immediately, and the remainder at *Michaelmas*, with intereſt thereon at five per cent. and the houſes being unoccupied, *A.* was to be let into immediate poſſeſſion; but that if the ſaid balance ſhould not be paid at *Michaelmas*, *A.* agreed to pay, in lieu of intereſt on the ſame, a clear rent of 42l. a year, out of which *B.* was to permit intereſt at the rate of five *per cent.* in reſpect of the ſum firſt paid to him to be deducted; this agreement was adjudged not to be uſurious.

Spurrier v. Mayoss, F. Vezey's Rep. 529. in Chan. 12 July, 1792. S. C. 4. Bro. C. C. 28.

Sect. 43. A ſecond bond made after the forfeiture of a former, and conditioned for the receipt of intereſt according to the penalty of the forfeited bond, is as much within the ſtatute as if it had been made before the forfeiture; for if ſuch a practice ſhould be allowed, nothing could be more eaſy than to elude the ſtatute; and though the whole penalty be due in ſtrictneſs to the obligee, yet the true principal debt is in conſcience no greater after the forfeiture of the bond than it was before.

3. Keble 142. Con. Noy 2.

† *Sect.* 44. So alſo if a promiſſory note, originally given upon a uſurious conſideration, be indorſed over to *A.* and *B.* gives *A.* a bond in conſideration of his delivering up the note of hand, it ſeems admitted, that on the bond being put in ſuit, and the ſtatute of Uſury pleaded, the defendant may give evidence that the promiſſory note was originally given on a uſurious conſideration, and thereby deſtroy the validity of the bond.

Walton v. Shelley. 1. Term Rep. 296.

Sect. 45. But although the deed, ſecuring the repayment of the money borrowed, be drawn purſuant to the ſtatute, yet if the whole of the principal be not fairly advanced, it is void.

† *Sect.*

Davidſon *v.* Barnard Pitt, Eaſter Term 33. Geo. 3. Eſpin.N.P.11.

† *Sect.* 46. As where *A.* having occaſion for a ſum of money applied to *B.* and offered to ſecure the ſum on a mortgage, and *B* ſaid that all his money was in the funds, and that to ſell out ſtock at that time would be a conſiderable loſs, ſtock then ſtanding at 73, but that if *A.* would take the ſtock at 75 he ſhould have the ſum he wanted, and accordingly received 1,500 l. in ſtock valued at 75, which he ſold out the ſame day at 72¼, that being the then market price, it was held, that the executor of the mortgagee could not maintain an ejectment on the mortgage deed.

Pratt *v.* Willey, Sit. Mich. 34. Geo. 3. Eſpin.N.P.40.

† *Sect.* 47. So alſo if the diſcounter of a bill of exchange make the holder take goods at a higher price than they are worth upon a fair eſtimate, it is uſury; for a party by ſubſtituting goods inſtead of money ſhall not, by colour of their pretended value, take above legal intereſt, and evade the ſtatute.

Maſſa *v.* Dowling, Stra. 1243.

† *Sect.* 48. So if *A.* indorſe a note of 200 l. to *B.* who advances *A.* one hundred and ninety-ſeven pounds three months before it is due, and at the end of the three months takes another note on advancing 3 l. for other three months, this is uſury.

Moor *v.* Battie, Amb.Rep. 371.

† *Sect.* 49. So alſo where *A.* lent *B.* ſeveral ſums of money on mortgage, and *B.* having occaſion for more, *A.* advanced him 1,900 l. by ſelling out 1,000 l. *South-Sea Annuities*, which at that time were under par, and ſold at a loſs of 76 l. upon the whole, and paid him the money for which they ſold, and took a mortgage from him for 1000 l. at five *per cent.* intereſt, with a covenant to reduce the intereſt to four *per cent.* if paid within ſuch a time, it was held uſurious.

Lowe *v.* Waller, Dougl. 736.

† *Sect.* 50. So where upon a negociation for a loan of money the lender pretends that it is inconvenient to him to advance money, but furniſhes the borrower with goods to the amount of the ſum wanted, and the goods are afterwards ſold by the intervention of a broker recommended by the lender, and a ſecurity taken by the lender, payable at a future day, for a ſum far exceeding the value of the goods, and five *per cent.* intereſt, this is a uſurious loan, and the ſecurity is void.

Jeſtens *v.* Brook, Cowp. 793.

† *Sect.* 51. It ſeems alſo that if *A.* in conſideration of advancing 45 l. for which he takes the borrower's note of hand, payable on demand, ſtipulates to have half of the profits upon a reſale of certain goods intended to b purchaſed by the borrower with the money, and two hours after

after the purchaſe demands payment of the note, and the ſame night puts a perſon into poſſeſſion jointly for himſelf and the borrower, and the goods upon a reſale produce only a neat profit of five pounds, this is a uſurious tranſaction.

As to the ſecond particular, *viz.* In what caſes the uſurer is liable to the penalties of 12. Ann. c. 16.

† *Sect.* 52. To incur the penalties of uſury there muſt be, FIRST, a corrupt contract between the parties; SECONDLY, monies or other things lent; THIRDLY, above five *per cent.* received by the lender for forbearance; and wherever theſe three matters concur, the offence of uſury is compleated, although no time is mentioned with reſpect to repayment of the principal, for the offence may be committed though the principal money may never be paid. Lloyd *qui tam* Williams, 3. Wilſ. 250 to 262.

† *Sect.* 53. For although the very contract avoids the ſecurity, yet the treble value is not forfeited until ſomething be *taken* above the legal rate of intereſt; and therefore, where *G.* borrowed a hundred pounds of *B.* on his bond, conditioned to repay the ſame at ſix months, with five *per cent. per annum*, and gave two guineas to *B.* at the time the money was advanced as a premium for the loan, and the principal and two pounds ten ſhillings intereſt were repaid at the end of ſix months, it was held, that the bond was void, but that the uſury was not committed until the half year's intereſt was received, for the penalty is only incurred by "taking, accepting, and receiving more than legal "intereſt." Dougl. 225. 2. Bl. Rep. 796.

† *Sect.* 54. So where *A.* gave credit to *B.* for jewels to a certain amount, but *B.* not being able to raiſe money on them deſired that *A.* would exchange them for old plate; and *A.* ſaid that old plate was as good as money, and accordingly gave him in money the value of as much old plate as was leſs by a hundred pounds than what the jewels had been ſold for, for the whole amount of which *B.* was to ſtand indebted; it was held that *A.* was not liable to the penalty of the ſtatute. Johnſton *qui tam* Picket, B. R. Eaſter Term, 1785. Eſpinaſſe N.P. 41.

Sect. 55. The receipt of intereſt before the time when it is in ſtrictneſs due, being voluntarily paid by the debtor, for the greater convenience of the creditor, or for any other ſuch like conſideration, without any manner of corrupt practice, or any previous agreement of this kind at the making of the firſt contract, does not make the party liable to the forfeiture of the treble value. 1. Bulſ. 17. 20. Yel. 30, 31. Noy 171. 2. Keble 690. Con. 1. Leon. 96.

† *Sect.*

Noy 37. 3. Leon. 96.

Sect. 56. In an aſſurance for the payment of fifty ſhillings for the uſe of one hundred pounds for ſix months, the computation ſhall be by calendar and not by lunar months, becauſe by the latter the intereſt would exceed the rate allowed by the ſtatute.

As to the third particular, *viz.* In what way the offender may be proceeded againſt.

† *Sect.* 57. By 12. Ann. c. 16. ſ. 2. it is enacted, "That "the one moiety of all the forfeitures ſhall be to the queen, "and the other moiety to him or them that will ſue for "the ſame, in the ſame county where the ſeveral offences "are committed, and not elſewhere, by action of debt, "bill, plaint, or information, in which no eſſoin, wager "of law, or protection ſhall be allowed."

† *Sect.* 58. But by 31. Eliz. c. 5. "All actions, ſuits, "bills, indictments, or informations, on any penal ſtatute where the penalty is limited to the queen only, ſhall "be brought within *two years* after the offence committed, "and when limited to he queen and any other perſon, "within *one year* next after the offence committed; but in "default thereof, then the ſame may be brought for the "queen any time within two years after that year ended."

Rex v. Upton, Stra. 816.

† *Sect.* 59. It ſeems, that an indictment will lie on the 12. Ann. c. 16. although that mode of proceeding is not mentioned in the ſtatute.

Fiſher v. Beaſley, Doug. 235.

† *Sect.* 60. And it is decided, that an action may be brought for the *penalty*, though more than a year has elapſed ſince the payment of the *premium*, if it be not a year after what has been paid exceeded legal intereſt.

Low v. Walter, Dougl. 698. *notis.*

† *Sect.* 61. Alſo an action will lie to recover back what has been paid on a uſurious contract above the principal and legal intereſt.

Fitzroy v. Gwillim, 1. Term Rep. 153.

† *Sect.* 62. But it is decided, that a perſon who has pledged goods as a ſecurity for money borrowed on a uſurious contract, cannot maintain *trover* againſt the lender, unleſs he has paid, or tendered to pay, the ſum actually advanced, with the legal intereſt due thereon.

As

As to the fourth particular, *viz.* What is required in *the pleadings*.

Sect. 63. A fine (*a*) levied, or a judgment ſuffered, in purſuance of a uſurious contract, may be avoided by an averment of the corrupt agreement, as well as any common ſpecialty or parol contract.

(*a*) 3. Co. 80. 9. Co. 36. 1. Jon. 203. 1. Roll. 41, 42. 2. Ven. 83. 108. 2. Leon. 166. Con. C. Eliz. 25. 588. 1. Sid. 182.

Sect. 64. In an *aſſumpſit* (*b*), if it appear, either upon the evidence or from the plaintiff's own expreſs ſhewing in his declaration, that the contract was uſurious, he cannot recover.

(*b*) Salk. 22. Skin. 411, 412. Lut. 273. Cro. Eliz. 588.

Or the court of chancery may direct an iſſue to try the uſurious contract. Cowper 728. Strange 1043. B. R. H. 233.

Sect. 65. But *a ſpecialty* cannot be avoided by uſury appearing on evidence or on the face of the condition, but it muſt be pleaded.

Sect. 66. In pleading a uſurious contract by the way of bar to *an action*, you muſt ſet forth the whole matter ſpecially, becauſe it lay within your own privity; but in *an information* on the ſtatute for making ſuch a contract, it is ſufficient to ſet forth the corrupt bargain generally, becauſe matters of this kind are ſuppoſed to be privily tranſacted, and ſuch information may be brought by a ſtranger.

1. And. 49. 1. Sid. 285. 3. Modern 35. 1. Keble 629. Noy 143. Cro. Jac. 440. Vide C. Car. 501. Precedents. 2. Ven. 81. Lutw. 468. Co. En. 168. Clift. 185. Bro. V. M. 255. Jones 413.

† *Sect.* 67. To an action on a note, if the defendant plead that it was given on a corrupt agreement, the plaintiff may reply, that it was given for a juſt debt; *abſque hoc*, that it was agreed *modo & formâ*, as the defendant pleads.

Cooke *v.* Ratcliffe, B. R. H. 287.

Sect. 68. (*c*) In every information on the ſtatute of Uſury, it is neceſſary expreſsly to ſet forth *the place* where the corrupt bargain was made.

(*c*) 1. Leon. 96, 97.

† *Sect.* 69. It is alſo neceſſary to lay *the time* preciſely; and therefore, where a ſecurity was dated on the 14th, but not ſigned till the 16th, and it was laid on the 14th, it was held bad.

Cowp. 671, 672.

Sect. 70. If a uſurious contract in the county of *D.* be pleaded in bar to an action on a bond ſaid to be made in the county of *E.* the trial ſhall be in the county of *D.* becauſe the ground of the matter is the uſurious contract, and the bond is confeſſed by the plea.

1. Leon. 148, 149.

Scott v. Breſt, 2. Term Rep. 238.

† *Sect.* 71. If *A.* by deed executed in *London*, for ſecuring the repayment of money lent to *B.* is appointed receiver of *B.'s* rents in *Middleſex*, with a pretended ſalary which enables him to retain uſurious intereſt, and he accordingly receives the rents in *Middleſex*, but ſettles the account in *London*, and *there* pays the balance on which the uſurious intereſt is allowed, the offence is compleated in *London*, and the *venue* in a *qui tam* action for the penalty is properly laid there.

Richards v. Brown, Dougl. 114.

† *Sect.* 72. In an action of uſury, a variance between the name of the attorney in the warrant and in the declaration, may be amended by altering the name in the warrant to that in the declaration, although after error brought and the variance aſſigned for error; but *ſums* and *dates* in ſuch declaration cannot be amended after the time limited for trying the action is expired.

Dougl. 114. *notis.*

Tate v. Wellings, 3. Term Rep. 351.

† *Sect.* 73. A corrupt agreement for the forbearance of money *till one or the other of two days*, at the option of the borrower, muſt be pleaded, according to the fact, in the alternative; and if it be ſtated as an abſolute forbearance until *one* of thoſe days, the evidence will not ſupport the plea.

As to the fifth particular, *viz.* What *evidence* may be given in caſes of uſury.

Hardres 337. Co. Lit. 6. b. 2. Roll. 685. 2. Raym. 191. b. 2. c. 46. ſ. 24 1. Vent. 49. 1. Salk. 285.

Sect. 74. He who hath agreed to pay money upon a uſurious contract, ſhall not be admitted to give evidence upon an information againſt the uſurer, unleſs he have paid off the whole debt; for by ſuch means a man might avoid his own act and deed.

Abrahams *qui tam* v. Brown, 4. Burr. 2251.

† *Sect.* 75. But in an action on the ſtatute, where money was uſuriouſly lent on the pledge of jewels greatly exceeding in value the principal ſum, and the declaration only ſtated the corrupt bargain and loan, without noticing any bond, aſſurance, or contract, whereupon or whereby uſury was received or taken, it was determined, on great deliberation, that the borrower is a competent witneſs, not only to prove the repayment of the principal money, but alſo the uſurious tranſaction.

Maſters *qui tam* v. Drayton, 2. Term Rep. 496.

† *Sect.* 76. But in a *qui tam* action of uſury againſt an aſſignee of a bankrupt for taking uſurious intereſt on a loan of money to the bankrupt before his bankruptcy, the bankrupt is not a competent witneſs to prove the offence, if he has not obtained his certificate, or repaid the money, notwithſtanding

withſtanding he is ready to releaſe to his aſſignees all benefit which may ariſe from the diſcharge of this debt in particular, and all claim and allowance of ſurplus in general, and notwithſtanding has proved his demand for the money lent, under the commiſſion.

† *Sect.* 77. But it has been decided, that if *A.* the indorſee of a promiſſory note, indorſe it to *B*, and *C.* gives a bond to *B.* in conſideration of his delivering up this note, *A.* is not a competent witneſs, in an action of debt on the bond to which the ſtatute of uſury is pleaded, to prove that the conſideration for the note was uſurious; for though there is no objection to his competency in point of intereſt, becauſe by deſtroying *the bond* he ſets up *the note*, yet it is a rule of law, that no party who has ſigned a paper or deed ſhall ever be permitted to give teſtimony to invalidate the inſtrument which he has ſo ſigned. Walton *v.* Shelley, 1. Term Rep. 296.

Sect. 78. An information for an uſurious contract on a loan of money cannot be ſupported by evidence of ſuch a contract on a bargain concerning wares ſold. 1. Leon. 95, 96. 2. Strange 1243. 1043. 1. Wilſon 286.

† *Sect.* 79. But in an action for the penalty, if the declaration ſtate a ſpecific ſum of money to have been lent, as the loan in which the uſury conſiſted, evidence that the loan was part in money and the reſt in goods of a known value, which the party receiving the loan agreed to take as cath, will ſupport the declaration. Barbe *qui tam* *v.* Parker, 1. H. Bl. Rep. 283.

† *Sect.* 80. But if a plaintiff declare upon a corrupt contract on the twenty-firſt of *December* 1774, giving day of payment to the twenty-third of *December* 1776, evidence of a contract on the twenty-third of *December* 1774 for two years is a fatal variance. Carliſle *v.* Treare, Gowp. 671.

As to THE SECOND POINT, *viz.* How far the Bank of *England* may borrow money at more than the legal rate of intereſt.

† *Sect.* 81. It is enacted by 3. Geo 1. c. 8. ſ. 39. "that "the Governor and Company of the Bank of England ſhall "have authority to borrow or take up money upon any "contracts, bills, bonds, or obligations, under their com- "mon ſeal, or upon credit of their capital ſtock, or other- "wiſe, for any time, or to be paid upon demand, and at "ſuch rate of intereſt as they ſhall think fit, although the "ſame ſhall happen to exceed the rate of intereſt allowed "by law, and to give ſuch ſecurity to the lenders as they "ſhall approve." The Bank may borrow money at more than 5 *per cent.*

See Stapleton *v.* Conway, 3. Atk. 727.

As to the THIRD POINT, *viz.* At what rate of intereſt monies may be borrowed on *plantation ſecurity*,

† *Sect.* 82. By 14. Geo. 3. c. 79. ſ. 1. it is recited, that "Large "ſums of money have been and may be lent, by his Majeſty's "ſubjects in *Great Britain*, upon mortgages, or other ſecu- "rities, on eſtates in the kingdom of *Ireland*, and alſo in "his Majeſty's colonies or plantations in the *Weſt-Indies*; "which loans have been found to contribute greatly to the "improvement of the ſaid kingdom, colonies, and planta- "tions: and whereas it has frequently been found conve- "nient to execute ſuch mortgages or ſecurities, and the "transfers or aſſignments thereof, in *Great Britain*: and "whereas doubts have ariſen, whether ſuch loans, and the "mortgages or ſecurities for the ſame, and the transfers "or aſſignments thereof, when made and executed in *Great* "*Britain*, are as valid and effectual as when made and exe- "cuted in the ſaid kingdom of *Ireland*, colonies, planta- "tions, or dominions; and, by reaſon of an act paſſed in 12. Ann. "the twelfth year of the reign of her late Majeſty Queen "*Anne*, intituled, *An Act to reduce the Rate of Intereſt, with-* "*out any Prejudice to Parliamentary Securities*, whether ſuch "mortgages or ſecurities are valid and effectual where the "rate of intereſt thereby reſerved or made payable is more "than five pounds *per centum*, though ſuch intereſt does not "exceed the rate of intereſt allowed and eſtabliſhed by the "law of the kingdom of *Ireland*, colony, plantation, coun- "try, or place, in which the eſtates compriſed in ſuch "mortgages or ſecurities reſpectively are; and whether his "Majeſty's ſubjects in *Great Britain* have not or may not "become ſubject or liable to penalties or forfeitures by re- "ceiving or taking intereſt for the ſums of money really "and *bonâ fide* advanced or lent on ſuch mortgages or ſecu- "rities, at the rate of intereſt allowed and eſtabliſhed by "the law of the kingdom, colony, plantation, country, or "place, wherein the mortgaged eſtates reſpectively lie: For "obviating ſuch doubts, IT IS ENACTED, that all mortgages All mort- "and ſecurities, which, by any of his Majeſty's ſubjects, gages, &c. of "already have been made and executed in *Great Britain*, of lands in Ire- "or concerning any lands, tenements, hereditaments, ſlaves, land, or the "cattle, or other things, lying and being in the kingdom of colonies, &c. "*Ireland*, or in any of the ſaid colonies, plantations, or do- "minions, or any eſtate or intereſt therein, to any of his "Majeſty's ſubjects, for ſecuring the repayment of the ſums "of money thereon reſpectively really and *bonâ fide* advanced "and lent, with intereſt for the ſame; and all bonds, co- "venants, and ſecurities, for payment of the ſame ſums of "money and intereſt reſpectively, and all transfers or aſ- "ſignments, which have been made and executed in *Great* "*Britain*,

" *Britain*, of ſuch mortgages, ſecurities, or bonds, to any " of his Majeſty's ſubjects, ſhall be as good, valid, and " effectual, to all intents and purpoſes whatſoever, as ſuch " mortgages, ſecurities, bonds, covenants, transfers, or aſ- " ſignments, would have been, if the ſame had been made " and executed in the kingdom, iſland, plantation, country, " or place, where the lands, tenements, hereditaments, ſlaves, " cattle, or other things, mentioned and compriſed in any " ſuch mortgage, ſecurity, transfer, or aſſignment as afore- " ſaid, ſeverally lie or are; and that none of his Majeſty's " ſubjects in *Great Britain* ſhall be ſubject or liable to any " of the penalties or forfeitures in the ſaid act made in the " twelfth year of her ſaid late Majeſty's reign, by receiving " or taking intereſt for the ſum or ſums of money really " and *bonâ fide* advanced or lent on any ſuch mortgage, ſe- " curity, bond, covenant, transfer, or aſſignment as afore- " ſaid, at the rate of intereſt allowed and eſtabliſhed by the " law of the kingdom, colony, plantation, country, or " place, wherein the mortgaged premiſes reſpectively lie or " are."

to be as effectual as if executed in the place, &c.

and no Britiſh ſubject liable to penalties.

† *Sect.* 83. By 14. Geo. 3. c. 79. ſ. 2. " All mortgages " and ſecurities which, by any of his Majeſty's ſubjects, " after the paſſing of this act, ſhall be made and executed " in *Great Britain*, of or concerning any lands, tenements, " hereditaments, ſlaves, cattle, or other things, lying and " being in the kingdom of *Ireland*, or in any of the ſaid " colonies, plantations, or dominions, or any eſtate or in- " tereſt therein, to any of his Majeſty's ſubjects, for ſe- " curing the repayment of the ſums of money thereon re- " ſpectively to be really and *bonâ fide* advanced and lent, " with intereſt for the ſame; and all bonds, covenants, and " ſecurities, for payment of the ſame ſums of money and " intereſt reſpectively, and all transfers or aſſignments " which, after the paſſing of this act, ſhall be made and ex- " ecuted in *Great Britain*, of ſuch mortgages, ſecurities, or " bonds, to any of his Majeſty's ſubjects, ſhall be as good, " valid, and effectual, to all intents and purpoſes whatſoever, " as ſuch mortgages, ſecurities, bonds, covenants, transfers, " or aſſignments, would be, if the ſame were made and exe- " cuted in the kingdom, iſland, plantation, country, or " place, where the lands, tenements, hereditaments, ſlaves, " cattle, or other things to be mentioned or compriſed in " any ſuch mortgage, ſecurity, transfer, or aſſignment as " aforeſaid, ſeverally lie or are; and that none of his Ma- " jeſty's ſubjects in *Great Britain* ſhall be ſubject or liable " to any of the penalties or forfeitures in the ſaid act made " in the twelfth year of her ſaid late Majeſty's reign, by re- " ceiving or taking intereſt for the ſum or ſums of money

Transfers of ſuch mortgages, &c. valid.

" to be really and *bonâ fide* advanced or lent on any ſuch " mortgage, ſecurity, bond, covenant, transfer, or aſſign- " ment as aforeſaid, ſo as the intereſt ſo to be received or " taken do not exceed the rate of ſix pounds for one hun- " dred pounds for a year; the aforeſaid act of parliament, " or any other law or ſtatute, to the contrary notwith- " ſtanding."

Not to make good ſuch mortgage, if advanced more than lands worth.

† *Sect.* 84. But by 14. Geo. 3. c. 79. ſ. 3. it is " Pro- " vided, that this act ſhall not make good, valid, or effectual, " any ſuch mortgage, ſecurity, bond, covenant, transfer, or " aſſignment, where the lender or lenders of any ſum or " ſums of money has or have knowingly advanced or lent, " or ſhall knowingly advance or lend thereon, more money " than the lands, tenements, hereditaments, ſlaves, cattle, " or other things in ſuch mortgages, ſecurities, transfers, " or aſſignments, mentioned or compriſed, or to be men- " tioned or compriſed, was, were, or ſhall be, at the time " or times of advancing or lending ſuch ſum or ſums of " money as aforeſaid, really and *bonâ fide* worth, to be " ſold."

Borrowing ſums exceeding the value, &c. to forfeit triple the value.

† *Sect.* 85. By 14. Geo. 3. c. 79. ſ. 4. " All and every " perſon or perſons borrowing any ſum or ſums of money, " under the authority of this act, upon any ſuch lands, te- " nements, hereditaments, ſlaves, cattle, or other things as " aforeſaid, exceeding the value which the ſame ſhall be, at " the time of borrowing ſuch ſum or ſums of money, really " and *bonâ fide* worth, to be ſold, over and above all incum- " brances which ſhall then affect the ſame, ſhall forfeit " treble the value of the ſum borrowed, the one half to " be paid to the informer, the other half to the treaſurer " of the royal hoſpital for ſeamen at *Greenwich*, in the " county of *Kent*, or to his ſufficient deputy or agent, for " the uſe of the ſaid hoſpital."

Mortgages to be regiſtered in the colony, &c.

† *Sect.* 86. By 14. Geo. 3. c. 79. ſ. 5. it is alſo " Provided, " that all ſuch mortgages, or other ſecurities granted under " the authority of this act, by which ſuch lands, tenements, " hereditaments, ſlaves, cattle, or other things, are intended " to be charged or affected, ſhall be regiſtered within the " kingdom, iſland, colony, plantation, country, or place, " where the ſaid lands, tenements, hereditaments, ſlaves, " cattle, or other things, ſeverally lie or are, within the " time limited by the laws of ſuch kingdom, iſland, colony, " plantation, country, or place; otherwiſe the ſame ſhall be " ſubject to the ſeveral proviſions and penalties contained " in the ſaid act made in the twelfth year of her late Ma- " jeſty queen *Anne*, in ſuch manner as the ſame would have " been

" been if this act had never been paſſed, unleſs the mort-
" gagee, or other perſon or perſons, for whoſe behoof ſuch
" mortgage or other ſecurity ſhall have been made or
" granted, ſhall have, *bonâ fide*, uſed his or their utmoſt en-
" deavour to cauſe the ſame to be regiſtered within the
" time herein before limited for that purpoſe."

† *Sect.* 87. It has been decided, that this ſtatute relates ſolely to ſecurities on *land* in *Ireland* and *the colonies*; and therefore, where *A.* contracted with *B.* for the ſale of an eſtate in the *Weſt Indies*, and it was agreed that part of the purchaſe money ſhould remain ſecured by the bond of *B.* and *C.* and that bond was afterwards cancelled, and another executed in *England* by *B.* and *D.* reſerving *ſix per cent.* intereſt (in the ſame manner as the former one), ſuch contract was uſurious.

Dewar *v.* Span, 3. Term Rep. 425.

2. Bro. C. C. 647.

As to the FOURTH POINT, *viz.* What rate of brokerage is allowed for raiſing of money.

† *Sect.* 88. By 12. Ann. c. 16. ſ. 2. it is enacted, " That
" all and every ſcrivener and ſcriveners, broker and brokers,
" ſolicitor and ſolicitors, driver and drivers of bargains for
" contracts, who ſhall after the ſaid nine-and-twentieth day
" of *September* take or receive, directly or indirectly, any
" ſum or ſums of money, or other reward or thing, for
" brokage, ſoliciting, driving, or procuring the loan, or
" forbearing of any ſum or ſums of money, over and above
" the rate or value of five ſhillings for the loan or for-
" bearing of one hundred pounds for a year, and ſo rateably,
" or above twelve pence, over and above the ſtamp duties,
" for making or renewing of the bond or bill for loan or
" forbearing thereof, or for any counterbond or bill con-
" cerning the ſame, ſhall forfeit for every ſuch offence
" twenty pounds, with coſts of ſuit, and ſuffer impriſon-
" ment for half a year; the one moiety of all which for-
" feitures to be to the queen's moſt excellent Majeſty, her
" heirs and ſucceſſors, and the other moiety to him or them
" that will ſue for the ſame, in the ſame county where the
" ſeveral offences are committed, and not elſewhere, by
" action of debt, bill, plaint, or information, in which no
" eſſoin, wager of law, or protection, ſhall be allowed."

No ſcrivener, &c. ſhall take above 5s. for 100l. for a year, for brokage, &c. nor above 12d. beſides ſtamp-duties, for making or renewing any bond, &c.

† *Sect.* 89. And it is ſaid, that if a ſcrivener make a contract for more than five ſhillings for procuring the loan of a hundred pounds, that ſuch contract is void, though the ſtatute itſelf doth not mention that it ſhall be ſo.

Bartlet *v.* Vinor, Carth. 251.

Solicitors, &c. who take more than 10s. per 100l. for procuring money for annuities, puniſhed, &c.

† *Sect.* 90. By 17. Geo. 3. c. 26. ſ. 7. it is enacted, "That "all and every ſolicitors and ſolicitor, ſcriveners and ſcri- "vener, brokers and broker, and other perſons or perſon, "who, from and after the paſſing of this act, ſhall aſk, de- "mand, accept or receive, directly or indirectly, any ſum "or ſums of money, or any other kind of gratuity or re- "ward, for the ſoliciting or procuring the loan, and for "the brokerage of any money that ſhall be actually and "*bonâ fide* advanced and paid as and for the price or conſi- "deration of any ſuch annuity or rent-charge, over and "above the ſum of ten ſhillings for every one hundred "pounds ſo actually and *bonâ fide* advanced and paid, ſhall "be deemed and adjudged guilty of a miſdemeanor; and "being lawfully convicted of ſuch offence in any court of "aſſize, *oyer* and *terminer*, or general gaol delivery, ſhall and "may, for every ſuch offence, be puniſhed by fine and im- "priſonment, or one of them, at the diſcretion of the "court; and that the perſon or perſons who ſhall have paid "or given any ſum or ſums of money, gratuity, or reward, "ſhall be deemed a competent witneſs or witneſſes to prove "the ſame."

Per BULLER, *Juſtice*, in Livington's caſe, Sitt. Weſt. B. R. 1787. See Rex *v.* Lookup.

† *Sect.* 91. It hath been ruled, that an indictment may be brought for this offence after two years have expired from the commiſſion of the offence; for that the 31. Eliz. c. 5. which limits all proceedings by indictment, &c. on a penal ſtatute, to two years, only reſtrains proceedings after that time where the penalty is ſpecific, and not where the fine is diſcretionary.

CHAP.

CHAPTER THE EIGHTY-THIRD.

Of MAINTENANCE.

MAINTENANCE is commonly taken in an ill ſenſe, and, in general, ſeemeth to ſignify an unlawful taking in hand, or upholding of quarrels or ſides, to the diſturbance or hindrance of common right. Co. Lit. 368. 2. Inſt. 208. 212. 563.

MAINTENANCE is ſaid to be twofold.

Sect. 2. FIRST, *Ruralis*, or in the country; as where one aſſiſts another in his pretenſions to certain lands, by taking or holding the poſſeſſion of them for him by force or ſubtlety; or where one ſtirs up quarrels and ſuits in the country, in relation to matters wherein he is no way concerned: and this kind of maintenance is puniſhable at the king's ſuit by fine and impriſonment, whether the matter in diſpute any way depended in plea or not, but is ſaid not to be actionable. Co. Lit. 36. 2. Inſt. 213. 1. Ric. 1. c. 4. 2. Ric. 115.

Sect. 3, SECONDLY, *Curialis*, or in a court of juſtice, where one officiouſly intermeddles in a ſuit depending in any ſuch court which no way belongs to him, by aſſiſting either party with money, or otherwiſe, in the proſecution or defence of any ſuch ſuit. Pult. 25. 2. Inſt. 212. 563. 2. R. Abr. 115. 77.

Of this ſecond kind of maintenance there ſeem to be three ſpecies:

FIRST, Where one maintains another without any contract to have part of the thing in ſuit, which generally goes under the common name of *Maintenance*. Co. Lit. 368.

SECONDLY, Where one maintains one ſide, to have part of the thing in ſuit, which is called *Champerty*.

THIRDLY, Where one laboureth a jury, which is called *Embracery*.

For the better underſtanding of the firſt of the abovementioned ſpecies, I ſhall examine,

1. What

1. What ſhall be ſaid to amount to an act of maintenance.

2. In what reſpects ſome ſuch acts may be juſtified.

3. How far offences of this kind are reſtrained by the common law.

4. How far by ſtatute.

As to THE FIRST POINT, *viz.* What ſhall be ſaid to amount to an act of maintenance.

Sect. 4. It ſeemeth clear, that whoever aſſiſts another with money to carry on his cauſe, as by retaining one to be of counſel for him, or otherwiſe bearing him out in the whole or part of the expence of the ſuit, may properly be ſaid to be guilty of an act of maintenance, as it ſeems to be taken for granted in the (*a*) books cited in the margin.

(*a*) 28. H. 6. 7. 12. 34. H. 6. 25, 26. 9 E. 4. 32. 21. H. 7. 40. 6. E. 4. 5. 19 E. 4. 3. 31. H. 6. 9. B. Maint. 7. 14. 17. 20. 24. 43, 44. 52. 2. R. Abr. 118. 6. Mo. D. 2. Rol. 77.

Sect. 5. Alſo it is ſaid, that not only he who lays out his money to aſſiſt another in his cauſe, but alſo that he who by his friendſhip or intereſt ſaves him that expence which he might otherwiſe be put to, or but endeavours ſo to do, is alſo guilty of maintenance; as where (*b*) one perſuades, or but endeavours to perſuade, a man to be of counſel for another *gratis*.

(*b*) 28. H. 6. 7. 12. 34. H. 6. 25. 9. E. 3. 32. Main. 6. 7. 20.

Sect. 6. Alſo it is ſaid, that all ſuch perſons may properly be called maintainers, who give, or but endeavour to give, any other kind of aſſiſtance to either of the parties in the management of the ſuit depending between them: as (*c*) by opening the evidence to the jury; or by (*d*) giving evidence officiouſly without being called upon to do it; or by ſpeaking in the cauſe (*e*) as one of counſel with the party; or by (*f*) retaining an attorney for him; or (*g*) perhaps for barely going along with him to enquire for a perſon learned in the law.

(*c*) 22 H. 6. 5. Main. 14. C. Eliz. 735. (*d*) 28. H. 6. 6 11. H 6. 41. Main. 5. 1 Main. 10. 2. R. Abr. 118.

(*e*) Het. 78, 79. (*f*) 1. R. Abr. 593. (*g*) 19 E. 4. 3. 12. E. 4. 14. Het. 79.

Sect. 7. Alſo it hath been ſaid, that thoſe ſhall come under the like notion, who give any public countenance to another in relation to any ſuch ſuit; as where one of great power and intereſt ſays (*h*) publicly, that he will ſpend twenty pounds on one ſide, or that he will give twenty pounds to labour the jury, whether in truth he ſpend one penny

(*h*) 22. H 6. 5. Main. 14. Main. 8.

penny or not; or where such a person (*a*) comes to the bar with one of the parties, and stands by him while his cause is tried, whether he say any thing or not; for such kinds of practices do not only tend to discourage the other party from going on in his cause, but also to intimidate juries from doing their duty.

(*a*) 22. H. 6. 6. 11. H. 6. 39. 19. E. 4. 3. Main. 51.

Sect. 8. But it seems, that a bare (*b*) promise to maintain another is not in itself maintenance, unless it be either in respect of the public manner in which, or the power of the person by whom, it is made.

(*b*) 9 H. 7. 18. B. Champ. 9.

Sect. 9. Also it is said to be as much maintenance for a (*c*) juror, as for any other person, to solicit a judge to give judgment according to the verdict, because after a juror has given his verdict he has nothing more to do.

(*c*) B. Main. 40. 18. E. 4. 1, 2. 17. E. 4. 5. B. Main. 39.

Sect. 10. But it is said to be no maintenance for a juror to exhort his companions to join with him in giving such a verdict as seems to him to be right.

Sect. 11. However it seems clear, (*d*), that a man is in no danger of being judged guilty of an act of maintenance for giving another friendly advice, what action is proper for him to bring for the recovery of a certain debt, or what method it is safest to take to free him from such an arrest, or what counsellor or attorney is likely to do his business most effectually; for it would be extremely hard to make such neighbourly acts of kindness, which seem rather commendable than blame-worthy, to come under the notion of maintenance, which always seems to imply a contentious and over-busy intermeddling in other men's matters, in which respect it is so highly criminal. Yet it is said, that a man of great power, not learned in the law, may be guilty of maintenance, by telling another who asks his advice, that he has a good title.

(*d*) 12. E. 4. 14. 19 E. 4. 3. 22. H. 6. 5. B. Main. 17. 3. R. Abr. 118. 2. Inst. 364. Moor 6. F. Main. 21. 2. Roll. 181. Co. Litt. 364. 2. Leon. 48.

Sect. 12. Also it hath been said, that no one can be guilty of maintenance in respect of any money given by him to another before any suit is actually commenced; yet if it plainly appear, that it was given merely with a design to assist him in the prosecution or defence of an intended suit, which afterwards is actually brought, surely it cannot but be as great a misdemeanor in the nature of the thing, and equally criminal at common law, as if the money were given after the commencement of the suit, though perhaps it may not in strictness come under the notion of maintenance.

3. H. 6. 54. F. Main. 18. B. Main. 1.

If a mortgagee, not a party in the suit, advances money to support the title, it is not maintenance. 3. P. W. 375.

Sect.

47. Ed. 3. 19. B. Champ. 2. *Sect.* 13. However it is certain, that one may as properly be ſaid to be guilty of maintenance, within the meaning of the words "*adhuc manu tenet*," in an action of maintenance, for ſupporting another after judgment, as for doing it hanging the plea; becauſe the party grieved may be diſcouraged thereby from bringing a writ of error or attaint.

As to THE SECOND POINT, *viz.* In what reſpects ſome acts of this kind may be juſtified,

I ſhall conſider the following particulars:

1. How far they are juſtifiable in reſpect of an intereſt in the thing in variance.

2. How far in reſpect of kindred or affinity.

3. How far in reſpect of other relations.

4. How far in reſpect of charity.

5. How far in reſpect of the profeſſion of the law.

As to the firſt of theſe particulars, *viz.* How far ſome acts of this kind are juſtifiable in reſpect of an intereſt in the thing in variance,

(*a*) 19. E. 4. 3, 9. H. 6. 64. B. Main. 3. 53. 2. R. Abr. 117. *Sect.* 14. It ſeemeth to be clearly agreed, that if (*a*) a tenant in tail or for life be impleaded, he in remainder or reverſion may lawfully maintain the defence of the ſuit with his own money.

(*b*) 6. E. 4. 2. 2. R. Abr. 117. B. Main. 33. 39. H. 6. 20. Main. 28. (*c*) 14. H. 6. 7. B. Main. 23. 2. R. Abr. 117. *Sect* 15. And upon the like ground it ſeems to be clear, that if in an action of treſpaſs, &c. brought by or againſt a (*b*) leſſee for years, the inheritance come into queſtion, the leſſor may lawfully maintain his leſſee, and give (*c*) evidence to prove the inheritance in himſelf; for though the judgment which may be given againſt the leſſee cannot directly bind his inheritance, yet the verdict may be a prejudice to his title, being given on a ſuppoſal of his not having a good one.

Sect. 16. Alſo it hath been admitted as clear law, that if one ſeiſed in fee of certain land bring an action of treſpaſs *quare clauſum fregit*, and then alien the land, and afterwards in the trial of the cauſe it be queſtioned whether the inheritance at the time of the ſuppoſed treſpaſs belonged to the plaintiff or defendant, the alienee may lawfully produce evidence to prove that the inheritance was in the plaintiff, becauſe the plaintiff's title is now become his own.

Sect.

Sect. 17. Alſo it hath been ſaid, that not only thoſe who have a certain intereſt, but alſo that thoſe who have a bare contingency of ſuch an intereſt in the lands in queſtion, which poſſibly may never come *in eſſe*, may in like manner lawfully maintain another in an action concerning ſuch lands; from whence it follows, that if I grant to *B.* that if my leſſee for life ſhall die during my life, that then he ſhall have the land for ten years, and after my leſſee be impleaded, *B.* may maintain him. 9. H. 6. 4. 2. R. Abr. 117.

Sect. 18. And it hath been ſaid, that not only thoſe who have a contingency of ſuch an intereſt, which it is in no man's power to bar them of, if the contingency happen, may juſtify ſuch maintenance, but that thoſe alſo ſhall have the ſame privilege, who by the act of GOD have the immediate poſſibility of ſuch an intereſt, though it be in the power of another to deprive them of it; and therefore that an heir apparent, or the huſband of ſuch heir, may lawfully maintain the anceſtor in an action concerning the inheritance of the land whereof he is ſeiſed in fee. 14. H. 7. 2. 19. Ed. 4. 3. 21. H. 6. 16. 2. Inſt. 564. 2. R. A. 115.

Sect. 19. But it is ſaid, that the grantee of a reverſion, before the late ſtatute for amendment of the law which made all attornment needleſs, could not maintain the tenant of the land without attornment, becauſe his poſſibility was wholly created by the act of the party, and could not be executed but by the voluntary attornment of the tenant, which there was no remedy to compel him to make by the common law; but perhaps the authority of this opinion may be queſtionable, eſpecially if ſuch grant were made for good conſideration: for ſince thoſe who have only an equitable intereſt in lands, may lawfully maintain others in actions relating to thoſe lands, as ſhall more fully be ſhewn in the twenty-firſt ſection, and ſince the grantor in equity ſhall ſtand intruſted for the grantee after the grant, and the tenant may be enforced by a court of equity to attorn to him, I do not ſee any good reaſon why ſuch grantee ſhould be eſteemed ſuch a ſtranger to the land, that he may not lawfully defend an action concerning it, in the event whereof he is ſo nearly concerned. 9. H. 6. 64. 2. R. Abr. 117. 34. H. 6. 30.

Sect. 20. But it ſeems clear, that he who is bound to warrant lands, may lawfully maintain the tenant in the defence of his title, becauſe he is bound by the warranty to render other lands to the value of thoſe which ſhall be evicted. 11. H. 6. 41. B. Main. 51. 2. R. Abr. 118.

Sect. 21. Alſo it ſeems to be agreed, that he who hath an equitable intereſt in lands or goods, or even in a *choſe in action*, may lawfully maintain another in an action relating thereto;

thereto; and therefore it ſeemeth to be clear, that a man may lawfully maintain (a) thoſe who are infeoffed of lands in truſt for him, in an action concerning thoſe lands, and that if he ſell them to another, the vendee ſhall have the ſame privilege.

(a) 34. H. 6. 30. 15. H. 7. 2. 2. E. 4. 2. B. Main. 19. 30.

Sect. 22. Alſo it hath been (b) reſolved, that where *A.* was bound as a ſurety for *B.* and *B.* thereupon made a deed of gift of certain ſheep to *A.* in order to ſave him harmleſs from the ſaid bond, with an implied truſt that the ſheep ſhould be returned to *B.* if *A.* ſhould not be damnified, and afterwards an action was brought againſt *A.* for the taking of ſheep, *B.* might juſtify the maintaining of him in reſpect of the ſaid truſt.

(b) Noy 100. Moor 620. See 39. H. 6. 19. 6. 20. F. Main. 14.

Sect. 23. Alſo it ſeemeth to be (c) certain, that the aſſignee of a bond, or other *choſe in action*, being made over to him for good conſideration, in ſatisfaction of a precedent debt due *bonâ fide* to him, and not merely in conſideration of the intended maintenance, may either maintain the obligee in an action brought by him for the debt, or commence an original action in his name, for he hath an equitable intereſt in the debt.

(c) 34. H. 6. 30. 15. H. 7. Noy 52. C. Eliz. 552. 1. Sid. 21. B. Main. 9.

Sect. 24. Alſo it ſeemeth to be (d) agreed, that wherever any perſons claim a common intereſt in the ſame thing, as in a way, churchyard, or common, &c. by the ſame title, they may maintain one another in a ſuit relating to the ſame.

(d) 18. E. 2. 4. B. Main. 41. Hob. 92. 2 R. Abr. 118. Noy 99. Moor 562. 788. 1. Roll. 57.

Sect. 25. It is ſaid, that he who is (e) bail for another, may take care to have his appearance recorded, but that he ought not to intermeddle any farther.

(e) 34. H. 6. 26. 14. H. 6. 6. 18. Ed. 4. 12.

As to the ſecond of the ſaid particulars, *viz.* How far ſome acts of this kind are juſtifiable in reſpect of kindred or affinity.

Sect. 26. It ſeems to be agreed, that whoever is in any way of kin or affinity to either of the parties, ſo long as the ſame (f) continues, or but related to him by being his (g) godfather, may lawfully (h) ſtand by him at the bar, and counſel and aſſiſt him, and alſo pray another to be of counſel to him; but that he cannot juſtify the laying out of any of his own (i) money in the cauſe, unleſs he be either (k) father, or ſon, or heir apparent to the party, or the huſband of ſuch an heireſs.

(f) 20. H. 6. 6. Ed. 4. 5. 14. H. 7. 2. (g) 6. Ed. 4. 5. F. Main. 16 (h) 21. H. 6. 15. 11. H. 6. 41, 42. 12. H. 6. 2. 19. Ed. 4. 32. (i) 19. Ed. 4. 5. 2. Inſt. 564. (k) 21. H. 6. 16. 2. Inſt. 564. Vide ſup. ſ. 14.

As

As to the third of the ſaid particulars, *viz.* How far ſome acts of maintenance are juſtifiable in reſpect of other relations,

I ſhall conſider,

1. How far a lord may maintain his tenant.

2. How far a tenant may maintain his lord.

3. How far a maſter may maintain his ſervant.

4. How far a ſervant may maintain his maſter.

5. How far one neighbour may maintain another.

As to the firſt point, *viz.* How far a landlord may maintain his tenant.

Sect. 27. It ſeems certain, that not only the (*a*) lord, but alſo the *ceſtuy que uſe* of a ſeigniory, may come with the tenant to a trial in an aſſize againſt him, and ſtand by him and aſſiſt him, and alſo pray the ſheriff to return an indifferent jury. (*a*) 11. H. 6. 39. b. 40. 2. R. Abr. 117. B. Main. 50.

Sect. 28. Alſo it ſeemeth, that the (*b*) lord of a town, in an action brought againſt the inhabitants, wherein a right to a common burying-place, claimed by them, is brought into queſtion, may maintain them in the defence of their right by ſhewing authentic evidence thereof to the jury. (*b*) 18. Ed. 4. 2. B. Main. 50.

Sect. 29. And in ſome (*c*) Books it is ſaid, generally, that the lord may maintain his tenant, without ſaying how far he may do it; and I do not find it any where expreſsly holden, that the lord may juſtify laying out his own money in defence of his tenant's title; but it ſeemeth the better opinion, that he may as well juſtify it as any other of the above-mentioned acts of (*d*) maintenance; for the lord, by accepting a man for his tenant, ſeemeth to take him under his immediate (*e*) protection; and inaſmuch as the lands were originally derived from the lord, and he hath the continual benefit of the ſervices due from them, the law in many caſes of (*f*) common right, obliges him to warrant them unto his tenant, and where it doth not oblige him, ſurely it will at leaſt permit him to do it: but it ſeems clear, that he cannot maintain him in reſpect of any lands not holden of him. (*c*) 9. H. 6. 64. B. Main. 3. (*d*) Co. Lit. 65. (*e*) Co. Lit. 101. 384. 11. H. 6. 42. 2. R. Ab. 117. (*f*) F. Main. 25.

As

As to the ſecond point, *viz.* How far a tenant may maintain his lord.

(*a*) 11. H. 6. 42. 2. R. Abr. 116.

Sect. 30. It is ſaid, that he may juſtify (*a*) coming with his lord, and ſtanding with him at a trial; but I cannot find any thing more relating to this matter in any of the Books.

As to THE THIRD POINT, *viz.* How far a maſter may maintain his ſervant.

(*b*) Het. 79. (*c*) 19. H. 6. 30. (*d*) 28. H. 6. 7. 12. b. 13. 34. H. 6. 25, 26. B. Main. 6. 14. F. Main. 20.

Sect. 31. It is ſaid, that the maſter may go along with his (*b*) ſervant, or with his (*c*) chaplain, being retained to live in his houſe with him, in order to (*d*) retain counſel, and that he may pray one to be of counſel for him, and alſo that he may go with him to the (*e*) trial, and ſtand with him and aid him while the cauſe is tried, but ought not to ſpeak in the court in favour of his cauſe.

Con. F. Main. 13. (*c*) 19. H. 6. 30. 11. H. 6. 42. 2. R. Abr. 116. Het. 79.

(*f*) 21. H. 7. 40. Moor 814. B. Main. 24. 31. H. 6. 9.

Sect. 32. Alſo it is ſaid, that if my ſervant be arreſted in an action of (*f*) debt, I may aſſiſt him with money in order to keep him out of priſon, that I may have the benefit of his ſervice.

19. Ed. 4. 3. 2. R. Abr. 116. Het. 79. B. Main. 44. 52.

Sect. 33. But it is ſaid, that the maſter, in real actions, cannot juſtify laying out money for his ſervant, unleſs he hath ſome of his wages in his hand; which, if the ſervant be willing, the maſter may ſafely lay out on his behalf.

As TO THE FOURTH POINT, *viz.* How far a ſervant may maintain his maſter.

(*g*) 39. H. 6. 5, 6. Con. Keil. 50. (*h*) 19. E. 4. 3. (*i*) 19. H. 6. 31. (*k*) 11. H. 6. 42. (*l*) 3. H. 6. 57. 54. 11. H. 6. 10, 11.

Sect. 34. It ſeemeth clear, that a perſon generally retained by another as his ſervant to do all manner of ſervices, and not for a (*g*) particular occaſion only, may juſtify (*h*) riding about to ſpeed his buſineſs, and going to (*i*) counſel in his behalf, and ſhewing his evidences to the counſel or to the jury, and (*k*) ſtanding by him at a trial between him and another; but it is certain that he cannot lawfully lay out any of his own (*l*) money to aſſiſt the maſter in his ſuit.

19. E. 4. 3. 12. Ed. 4. 14.

As to THE FIFTH POINT, *viz.* How far one neighbour may aſſiſt another.

(*m*) 19. E. 4. 3. 2. R. Ab. 118.

Sect. 35. It ſeems clear, that a man may lawfully go with his (*m*) neighbour to enquire for a perſon learned in law, but that he ought not to give him any money towards carrying on his ſuit.

As

As to the fourth inſtance, wherein ſome acts of this kind are juſtifiable, *viz.* That relating to charity.

Sect. 26. It ſeems to be (*a*) agreed, that any one may lawfully give money to a poor man to enable him to carry on his ſuit.

(*a*) 21. H. 6. 16. 9. H. 6. 64. 22. H. 6. 64. 22. H. 6. 55. B. Main. 14.

Sect. 27. Alſo it hath been adjudged, that any one may ſafely go with a (*b*) foreigner who cannot ſpeak *Engliſh* to a counſellor, and inform him of his caſe.

(*b*) 19 E. 4. 3. 34. H. 6. 25 15. H. 7. 2. B. Main. 7

As to the fifth inſtance, wherein ſome acts of this kind may be juſtified, *viz.* That relating to the profeſſion of the law.

I ſhall conſider,

1. How far they are juſtifiable in a counſellor.

2. How far in an attorney.

As to THE FIRST POINT, *viz.* How far acts of maintenance are juſtifiable in a counſel.

Sect. 28. There is no doubt but that a (*c*) counſellor, having received his fee, may lawfully ſet forth his client's cauſe to the beſt advantage; but it is certain, that he can no more juſtify (*d*) giving him money to maintain his ſuit, or threatening a juror, than any other perſon.

(*c*) 1. H. 6. 10, 11. 2. R. Abr. 116. 2. Inſt. 564.
(*d*) F Main. 8. 22. H. 6. 6.

As to THE SECOND POINT, *viz.* How far acts of maintenance are juſtifiable in an attorney.

Sect. 29. There is no doubt but that an attorney may (*e*) lawfully proſecute or defend an action in the court wherein he is an allowed attorney, in the behalf of any one by whom he ſhall be ſpecially retained, and that he may aſſiſt his client, by laying out his own money for him to be repaid again, and alſo may maintain an action againſt him for the ſame by virtue of ſuch *a retainer*, without any ſpecial promiſe.

(*e*) 13. H. 4. 16. Keilw. 50. Hob. 117. 2. Inſt. 564. 2 R. Abr. 116. F. Main. 21.

Sect. 30. And it is ſaid alſo, that attornies may juſtify ſuch maintenance in other courts wherein they are not (*f*) allowed attornies, but that they cannot have an action for the money ſo laid out without a ſpecial promiſe, and that they are more juſtified by a general (*g*) retainer to proſecute for another all his cauſes, than if they were not retained at all; and it is certain

(*f*) 3. Mod. 98. Vide 2. Danv. 487. 12, 13, 14. Winch. 52. 1. Jon. 208. C. Car. 159. 194.

(*g*) 2. R. Abr. 114.

Con. C. Eliz. 415. 459. 760. Moor 366. 2. R. Abr. 114, 115.

certain that they ought not to carry on a cauſe for another at their own expence, with a promiſe never to expect a repayment. And it ſeems juſtly queſtionable, whether ſolicitors who are no attornies can in any caſe juſtify the laying out their money in another's ſuit.

2. R. Abr. 115. Winch. 53. 2. Inſt. 214.

Sect. 31. However, it is certain that no counſellor or attorney can juſtify the uſing any deceitful practice in maintenance of a client's cauſe, and that they are liable to be ſeverely puniſhed for all miſdemeanors of this kind, not only by the common law, but alſo by ſtatute; for it is enacted by Weſtminſter 1. c. 29. "That if any ſerjeant, "pleader, or other, do any manner of diſceit or colluſion in "the king's court, or conſent unto it, in diſceit of the "Court, or to beguile the Court or the party, and thereof "be attainted, he ſhall be impriſoned for a year and a day, "and from thenceforth ſhall not be heard to plead in that "court for any man. And if he be no pleader, he ſhall be "impriſoned in like manner by the ſpace of a year and a "day at the leaſt. And if the treſpaſs require greater "puniſhment, it ſhall be at the king's pleaſure."

In the conſtruction of this ſtatute the following points have been holden.

11. E. 4. 3. B. Diſc. 28.

Sect. 32. FIRST, That counſellors, &c. who are not ſworn, are as much within the meaning of it as ſerjeants, &c. who are ſworn.

2. Inſt. 215. Dyer 249.

Sect. 33. SECONDLY, That all fraud and falſhood, tending to impoſe upon or abuſe the juſtice of the king's courts, are within the purview of it, as in the following inſtances:

2. Inſt. 215. F. N. B. 98.

Sect. 34. I. Where an attorney ſues out an *habere facias ſeiſinam*, falſely reciting a recovery in a real action, where in truth there was no recovery at all, and by colour thereof puts the ſuppoſed tenant in the action out of his freehold.

2. Inſt. 215.

Sect. 35. II. Where one brings a *præcipe* againſt a poor man, knowing that he had nothing in the land, on purpoſe to get the poſſeſſion from the true tenant.

41. E. 3. 1. 2. Inſt. 215.

Sect. 36. III. Where one procures an attorney to appear for a man, and confeſs judgment without any warrant.

Dyer 362. 20. E. 4. 9.

Sect. 37. IV. Where one pleads a falſe plea, known to be utterly groundleſs, and invented merely with a deſign to delay juſtice, and abuſe the Court; and therefore it is ſaid, that if a client deſire his attorney to plead ſuch a plea, the attorney

attorney ought to enter upon the roll, "*non fum veraciter informatus, ideo nihil dicit.*"

As to THE THIRD GENERAL POINT, *viz.* How far offences of this kind are reſtrained by the common law.

Sect. 38. It ſeemeth, that all maintenance is ſtrictly prohibited by the common law, as having a manifeſt tendency to oppreſſion, by encouraging and aſſiſting perſons to perſiſt in ſuits, which perhaps they would not venture to go on in upon their own bottoms; and therefore it is ſaid, that all offenders of this kind are not only liable to an (*a*) action of maintenance at the ſuit of the party grieved, wherein they ſhall render ſuch damages as ſhall be anſwerable to the injury done to the plaintiff, but alſo that they may be (*b*) indicted as offenders againſt public juſtice, and adjudged thereupon to ſuch fine and impriſonment as ſhall be agreeable to the circumſtances of the offence. Alſo it ſeemeth, that a court of record may commit a man for an (*c*) act of maintenance done in the face of the Court.

2. Inſt. 208, 212.

(*a*) 11. H. 6. 11. 2. Inſt. 208. 2. R. Abr. 114. 8. H. 5. 8.

(*b*) 2. R. Abr. 114. 2. Inſt. 208, 212.

(*c*) Het. 79.

As to THE FOURTH GENERAL POINT, *viz.* How far offences of this kind are puniſhed by the ſtatute.

Sect. 39. It is enacted by 1. Edw. 3. c. 14. which was farther enforced by 20. Edw. c. 4. "That none of the "king's miniſters, nor no great man of the realm, by him- "ſelf nor by other, by ſending of letters, nor otherwiſe, "nor none other great nor ſmall, ſhall take upon them to "maintain quarrels nor parts in the country, to the lett "and diſturbance of the common law."

Sect. 40. And it is farther enacted by 1. Rich. 2. c. 4. "That none of the king's counſellors, officers, or ſervants, "nor any other perſon within the realm of *England*, of "whatſoever eſtate or condition they be, ſhall take or ſuſtain "any quarrel by maintenance, in the country or elſewhere, "upon grievous pain, that is to ſay, the ſaid counſellors "and the king's great officers upon a pain which ſhall be "ordained by the king himſelf, by the advice of the lords "of his realm; and other leſs officers and ſervants of the "king's as well in the exchequer, and all his other courts "and places, as of his own meiny, upon pain to loſe their "offices and ſervices, and to be impriſoned, and then to be "ranſomed at the king's will, every of them according to "their degree, eſtate, and deſert; and all other perſons "through the realm upon pain of impriſonment, and to "be ranſomed as aforeſaid."

In the conſtruction of theſe ſtatutes the following points have been holden.

F. Main. 24. *Sect.* 41. FIRST, That maintenance of a ſuit in a court baron is as much within the purview thereof as maintenance in a court of record.

3. H. 6. 53, 54. B. Main. 1. F. Main. 18. *Sect.* 42. SECONDLY, That *nul tiel record* is a good plea to an action of maintenance brought on theſe ſtatutes; and therefore, that he who barely aſſiſts another in taking out an original which never is returned, is not liable to any ſuch action.

Fitz. Maintenance 17. 26. *Sect.* 43. THIRDLY, That it is not material, whether the plaintiff in an action on the ſaid ſtatutes were nonſuited, or recovered in the action wherein the maintenance is ſuppoſed.

Reg. 182. b. *Sect.* 44. Alſo it is certain, that he who fears that another will maintain his adverſary, may, by way of prevention, have an original writ grounded on the ſaid ſtatute, prohibiting him ſo to do.

12 Mod. 322. *Sect.* 45. Alſo all perſons are prohibited to give or receive any liveries or badges for maintenance, under ſevere penalties, by 1. Rich. 2. c. 7. 7. Hen. 4. c. 14. 13. Hen. 4. c. 3. 8. Hen. 6. c. 4. and 8. Edw. 4. c. 2.

† *Sect.* 46. And it is further enacted by 32. Hen. 8. c. 9. "That no perſon whatſoever ſhall unlawfully maintain, or "cauſe or procure any unlawful maintenance in any action, "demand, ſuit, or complaint, in any of the king's courts of "the chancery, *Whitehall*, or elſewhere, where any perſon "ſhall have authority by virtue of the king's commiſſion, "patent, or writ, to hold plea of lands, or to examine, hear, "or determine, any title of lands, or any matter of witneſſes, "concerning the title, right, or intereſt of any lands, tene- "ments, or hereditaments; and alſo that no perſon whatſo- "ever do unlawfully retain, for maintenance of any ſuit or "plea, any perſon or perſons, or embrace any freeholders "or jurors, or ſuborn any witneſs by letters, rewards, "promiſes, or any other ſiniſter labour or means, for to "maintain any matter or cauſe, or to the diſturbance or "hindrance of juſtice, or to the procurement, by occaſion "of any manner of perjury, by falſe verdict or otherwiſe, "in any manner of courts aforeſaid, upon pain to forfeit "for every ſuch offence ten pounds; the one moiety "thereof unto the king, and the other moiety to him that "will ſue for the ſame by action of debt, &c."

Sect.

Sect. 47. It ſeemeth, that in an information on this ſtatute it is not ſufficient to ſay, that the defendant maintained the party, without adding that he did it unlawfully. Savil 41, 42.

Sect. 48. Alſo it is ſaid to have been adjudged, that maintenance of a ſuit in a ſpiritual court is neither within this nor any of the other above-mentioned ſtatutes concerning maintenance. Noy 68. C. Eliz. 594.

Sect. 49. Alſo it hath been holden, that in an information on this ſtatute, it is neceſſary to ſhew that a plea was depending, and therefore that it is not ſufficient to ſay that a bill was exhibited. Savil 41, 42.

CHAPTER THE EIGHTY-FOURTH.

OF CHAMPERTY.

AND now we are come to the ſecond ſpecies of maintenance, called CHAMPERTY, which is the unlawful maintenance of a ſuit in conſideration of ſome bargain to have part of the thing in diſpute, or ſome profit out of it. 2. Inſt. 208. Co. Lit. 368.

Sect. 1. Having ſhewn in the precedent chapter what ſhall amount to an act of maintenance, and how far all maintenance in general, and conſequently champerty, is puniſhable by the common law, I ſhall only take notice in this place, how far this offence in particular is reſtrained by ſtatute, and to that end ſhall ſet down in order the ſeveral ſtatutes relating to it, and ſhew in what manner they have been expounded.

Sect. 2. And FIRST, it is enacted by the ſtatute of Weſtminſter 1. c. 25. "That no officers of the king by themſelves nor by other, ſhall maintain pleas, ſuits, or matters "hanging in the king's courts, for lands, tenements, or "other things, for to have part or profit thereof by covenant made between them; and he that doth, ſhall be "puniſhed at the king's pleaſure."

In the conſtruction of the ſtatute theſe following opinions have been holden.

Sect. 3. FIRST, That by the king's courts, therein mentioned, are intended only his courts of record. 2. Inſt. 208.

Sect. 4. SECONDLY, That under the word "*covenant*," which in a ſtrict ſenſe ſignifieth only an agreement by deed, all kinds of *promiſes* and *contracts* of this kind are included, whether they be made by *writing* or by *parol*. F.N.B. 172. 2. Inſt. 209. 563.

Sect. 5. THIRDLY, That maintenance in perſonal actions to have part of the debt or damages, is as much within the ſtatute, as maintenance in real actions for a part of the land. 47. Aſſize 5. 47. Ed. 3. 9.

F. N. B. 172.
2. Inſt. 209.
47. Ed. 3. 9.
47. Aſſ. 5.
9. H. 7. 18.
F. Champ. 4.

Sect. 6. FOURTHLY, That maintenance in conſideration of a rent granted out of land in variance is within this ſtatute, but that rent granted out of other lands is no way within the purview of it.

B. Champ. 2.

Sect. 7. FIFTHLY, That it hath been holden not to be material, whether he who brings a writ of champerty did in truth ſuffer any damage by it, or whether the plea wherein it is alledged be determined or not.

(*a*) 21. E. 3. 52.
30. Ed. 3. 3, 4.
2. R. Abr. 113
31.

Sect. 8. SIXTHLY, That the (*a*) maintenance of the tenant or defendant is as much within the meaning of the ſtatute, as the maintenance of a demandant or plaintiff.

(*b*) 1. H. 7. 2.
B. Champ. 6.

Sect. 9. SEVENTHLY, That (*b*) ſuch grants only of part of the thing in ſuit, which are made merely in conſideration of the maintenance are within the meaning of the ſtatute, and not ſuch as are made in conſideration of a precedent honeſt debt, which is agreed to be ſatisfied with the thing in demand when recovered.

Sect. 10. And it is further enacted by the ſtatute of Weſtminſter 2. c. 49. "That the chancellor, treaſurer, "juſtices, nor any of the king's counſel, no clerk of the "chancery, nor of the exchequer, nor any juſtice or other "officer, nor any of the king's houſe, clerk nor lay, ſhall "not receive any church, nor advowſon of a church, land, "nor tenement in fee, by gift or by purchaſe, or to farm, "nor by champerty, nor otherwiſe, ſo long as the thing is "in plea before the king, or before any of his officers, nor "ſhall take no reward thereof. And that he that doth "contrary to this act, either himſelf, or by another, or "make any bargain, ſhall be puniſhed at the king's pleaſure, "as well he that purchaſeth as he that doth ſell."

In the conſtruction of this ſtatute the following opinions have been holden.

2. Inſt. 484, 485.

Sect. 11. FIRST, That it extendeth only to the officers therein named, and not to any other perſons.

(*a*) 2. Inſt. 485.
(*b*) 2. Inſt. 484.
50. Aſſ. 3.
B. Champ. 8.
F. Champ. 6.
(*c*) 22. E. 3.
10. b. 52.
2. Inſt. 484.
F. N. B. 172.
D. E.

Sect. 12. SECONDLY, That it ſo ſtrictly reſtrains all ſuch officers from purchaſing any land, hanging a plea, that they cannot be excuſed by a conſideration of (*a*) kindred or affinity, and that they are within the meaning of the ſtatute, by barely making ſuch a purchaſe, whether (*b*) they maintain the party in his ſuit, or not; (*c*) whereas ſuch a purchaſe, for good conſideration made by any other perſon, of any

any terre-tenant, is no offence, unleſs it appear that he did it to maintain the party.

Sect. 13. And it is further enacted by 28. Edw. c. 11. in the following words: "Becauſe the king hath heretofore "ordained by ſtatute, that none of his miniſters ſhall take "no plea for maintenance, by which ſtatute other officers "were not bounden before this time, the king wills that no "officer, nor any other (for to have part of the thing in "plea), ſhall not take upon him the buſineſs that is in ſuit; "nor none upon any ſuch covenant ſhall give up his right "to another; and if any do and be attainted thereof, the "taker ſhall forfeit unto the king ſo much of his land and "goods as doth amount to the value of the part that he "hath purchaſed for ſuch maintenance. And to obtain "this, whoſoever will, ſhall be received to ſue for the king "before the juſtices before whom the plea hangeth, and "the judgment ſhall be given by them. But it may not be "underſtood hereby, that any perſon ſhall be prohibited to "have counſel of pleaders, or of learned men in law, for "his fee, or of his parents and next friends."

See alſo 33. Ed. 1. ſt. 3. 1. Rich. 2. c. 9. 1. Inſt. 369.

In the conſtruction of this ſtatute the following points have been holden.

Sect. 14. FIRST, That a (*a*) conveyance executed, hanging a plea in purſuance of a bargain made before, is not within the meaning of it.

(*a*) 30. Aſſ. 15. 8. Ed. 4. 13. 2. Inſt. 563. F. Champ. 13. F. N. B. 172.

Sect. 15. SECONDLY, That champerty in any action at (*b*) common law, whether it be real, perſonal, or mixt, is within this ſtatute: alſo it ſeems the better opinion, that the purchaſe of land while a ſuit of (*c*) equity concerning it is depending, is within the purview of it.

(*b*) 47. Ed. 39. 47. Aſſize 5. 2. Inſt. 563. (*c*) Moor 635. Con. 2. R. Abr. 113.

Sect. 16. THIRDLY, That a (*d*) leaſe for life, or years, or a voluntary gift of land, hanging a plea, is as much within the ſtatute as a purchaſe for money.

(*d*) 8. E. 4. 13. B. Champ. 10. F. N. B. 172.

Sect. 17. FOURTHLY, That a ſurrender made by a (*e*) leſſee to his leſſor is not within the meaning of this ſtatute; for ſince the leſſor may lawfully maintain his leſſee without ſuch a ſurrender, as hath been more fully ſhewn in the precedent chapter, ſurely *à fortiori* he may do it after the ſurrender.

(*e*) F. N. B. 172. 2. Inſt. 564.

Sect. 18. FIFTHLY, That no (*f*) conveyance, or promiſe thereof, relating to lands in ſuit, made by a father to his ſon, or by any anceſtor to his heir apparent, is within the ſtatute,

(*f*) 2. Inſt. 564. F. N. B. 172.

ſtatute, ſince it only gives them the greater encouragement to do what by nature they are bound to do.

(a) 13. H. 7. 17. B. Champ. 3.

Sect. 19. That the (*a*) giving of part of the land in ſuit, after the end of it, to a counſellor for his wages, is not within the meaning of it, if it evidently appears that there was no kind of precedent bargain relating to ſuch gift; but it ſeems (*b*) dangerous to meddle with any ſuch gift, ſince it cannot but carry with it a ſtrong preſumption of champerty.

(b) 2. Inſt. 564.

Vide 2. b. p. 382.

† *Sect.* 20. And it is enacted by 31. Eliz. c. 5. "That "the offence of champerty may be laid in any county, "at the pleaſure of the informer."

CHAP.

CHAPTER THE EIGHTY-FIFTH.

Of EMBRACERY.

FOR the better underſtanding of the nature of EMBRACERY, I ſhall conſider,

1. What kind of maintenance comes under the notion of embracery.

2. What acts of this nature are altogether unlawful.

3. In what circumſtances ſome kinds of them may be lawful.

4. How far this offence is reſtrained by the common law.

5. How far by ſtatute.

As to THE FIRST POINT, *viz.* What kind of maintenance comes under the notion of embracery.

Sect. 1. It ſeems clear, that (*a*) any attempt whatſoever to corrupt or influence, or inſtruct a jury, or any way to incline them to be more favourable to the one ſide than to the other by money, promiſes, letters, threats, or perſuaſions, except only by the ſtrength of the evidence and the arguments of the counſel in open court, at the trial of the cauſe, is a proper act of embracery, (*b*) whether the jurors on whom ſuch attempt is made give any verdict or not, or whether the verdict given be true or falſe.

(*a*) F. N. B. Co. Lit. 369. Moor 815. 4. Comm. 140.
(*b*) 21. H. 6. 26. 22. H. 6. 5. 37. H. 6. 31. B. Dec. Tant. 10, 11. 13. Co. Lit. 369. Moor 815

Sect. 2. (*c*) And the law ſo far abhors all corruption of this kind, that it prohibits every thing which has the leaſt tendency to it, what ſpecious pretence ſoever it may be covered with, and therefore it will not ſuffer a mere ſtranger, ſo much as to labour a juror to appear and act according to his conſcience.

(*c*) 13. H. 4. 16. Moor 806. C. Eliz. 816. Co. Lit. 159. 369.

Sect. 3. Alſo it is ſaid, that generally the giving of money to a juror (*d*) after the verdict, without any precedent contract in relation to it, is an offence ſavouring of the

(*d*) 39. Aſſ. 19. B. Dec. Tan. 14.

the nature of embracery; becauſe, if ſuch practices were allowable, it would be eaſy to evade the law, by giving jurors ſecret intimations of ſuch an intended reward for their ſervice, which might be of as bad conſequence as the giving of money before-hand. But it ſeems clear, that the giving of jurors ſuch a reaſonable recompence as is uſually allowed them for their expences in travelling, &c. and which may fairly be expected by them from either ſide that ſhall prevail, is no way criminal, becauſe if no ſuch allowance were to be expected, it would be often difficult to prevail with perſons to ſerve on a jury at their own charge; and therefore by experience it hath been found neceſſary to permit the parties to give jurors ſome amends for their charges.

(a) 22.H.6.5. 28.H.6.7.12. 31.H.6.8,9. B.Main.6.14. (b) 17.Ed.4,5. 18.Ed.4.4. B.Main. 32. 39.

Sect. 4. It hath been adjudged, that the bare (*a*) giving of money to another to be diſtributed among jurors, is an offence of the nature of embracery, whether any of it be afterwards actually ſo diſtributed or not: alſo it is (*b*) clear, that it is as criminal in a juror as in any other perſon to endeavour to prevail with his companions to give a verdict for one ſide by any practices whatſoever, except only by arguments from the evidence which was produced, and exhortations from the general obligations of conſcience to give a true verdict. And there can be no doubt but that all fraudulent contrivances whatſoever to ſecure a verdict are high offences of this nature; as where perſons by (*c*) indirect means procure themſelves or others to be ſworn on a *tales* in order to ſerve one ſide.

(c) 1. Saund. 301.

As to THE SECOND POINT, *viz.* What acts of this kind are altogether unlawful.

(d) 13.H.4.16, 17. 11.H.6.11. 2.R.Abr.116. 6.3. (e) 19.H.6. 31. 13.H.4.17. (f) 2. Bulſt. 25. Noy 102. Co. Lit. 362. Moor 815.

Sect. 5. It ſeems clear, that neither the party himſelf, nor his counſel, nor attorney, nor any perſon whatſoever, can juſtify any indirect practices of influencing a jury, either by giving (*d*) or promiſing them money, or (*e*) menacing them, or (*f*) inſtructing them in the cauſe beforehand, &c.

As to THE THIRD POINT, *viz.* In what circumſtances ſome acts of this nature may be lawful.

(g) Dyer 48. Co. Lit. 157. 369. Moore 813. Noy 102.

Sect. 6. It ſeemeth clear, that any perſon who may juſtify any other act of maintenance, may ſafely labour a juror to (*g*) appear and give a verdict according to his conſcience, but that no other perſon can juſtify intermeddling ſo far,

and

and that no one whatſoever can juſtify the labouring a juror (*a*) not to appear.

(*a*) Hob. 294.

As to THE FOURTH POINT, *viz.* How far offences of this kind are reſtrained by the common law.

Sect. 7. There can be no doubt but that they ſubject the offender either to an indictment or action, in the ſame manner as all other kinds of unlawful maintenance do by the common law. Alſo it ſeemeth, that if an act of embracery were not known before the trial of a cauſe, ſo that the party to whoſe prejudice it was intended, had no opportunity to prevent the ill effects of it, by challenging the juror who was practiſed upon, it will be a good ground to move the Court to ſet aſide the verdict.

As to THE FIFTH POINT, *viz.* How far offences of this kind are reſtrained by ſtatute.

Sect. 8. It is enacted by 5. Edw. 3. c. 10. "That if any "juror in aſſizes, juries, or inqueſts, take of the one party "or of the other, and be thereof duly attainted, that hereafter "he ſhall not be put in any aſſizes, juries, or inqueſts, and "nevertheleſs he ſhall be commanded to priſon and further "ranſomed at the king's will. And the juſtices before "whom ſuch aſſizes, juries, and inqueſts ſhall paſs, ſhall "have power to enquire and determine according to this "ſtatute."

Sect. 9. And it is further enacted by 34. Edw. 3. c. 8. "That in every plea whereof the inqueſt or aſſize doth paſs, "if any of the parties will ſue againſt any of the jurors, that "they have taken of his adverſary or of him for to give "their verdict, he ſhall be heard, and ſhall have his plaint "by bill preſently before the juſtices before whom they did "ſwear, and that the juror be put to anſwer without any "delay; and if they plead to the country, the inqueſt ſhall "be taken maintenant. And if any man other than the "party will ſue for the king againſt the juror, it ſhall be "heard and determined as afore is ſaid. And if the juror be "attainted at the ſuit of other than the party, and make a "fine, the party that ſueth ſhall have half the fine; and "that the parties to the plea ſhall recover their damages by "the aſſeſſment of the inqueſt. And that the juror ſo "attainted have the priſon of one year, which impriſon-"ment the king granteth, that it ſhall not be pardoned for "any fine; and if the party will ſue by writ, before other "juſtices, he ſhall have the ſuit in the form aforeſaid."

Sect.

Sect. 10. And it is further enacted by 38. Edw. 3. c. 12. "That if any jurors in aſſizes ſworn, and other inqueſts to "be taken between the king and party, or party and party, "do any thing take by them or other, of the party, plaintiff, "or defendant, to give their verdict, and thereof be attainted, "by proceſs contained in the ſaid ſtatute of 34. Edw. 3. be "it at the ſuit of the party that will ſue for himſelf, or for the "king, or any other perſon, every of the ſaid jurors ſhall pay "ten times as much as he hath taken. And that he that "will ſue ſhall have the one half, and the king the other "half. And that all the embraceors to bring or procure "ſuch inqueſt in the country to take gain or profit ſhall be "puniſhed in the ſame manner and form as the jurors. "And if the juror or embraceor ſo attainted have not "whereof to make gree in the manner aforeſaid, he ſhall "have the impriſonment of one year: and the intent of "the king, of great men, and of the commons is, that no "juſtice nor other miniſter ſhall enquire of office, upon "any of the points of this article, but only at the ſuit of "the party, or of other, as afore is ſaid." See alſo the 32. Hen. 8. c. 9. ſec. 3. 6.

In the conſtruction of theſe ſtatutes the following points have been holden.

Sect. 11. FIRST, That all actions of *decies tantum* being founded on an offence ſuppoſed to have been committed in ſome former action appearing upon record, it will be a good plea in bar, either that there is no (*a*) ſuch record at all, or that there is not any ſuch (*b*) record by which it may appear that the juror was ſworn; and that it is a good (*c*) exception in abatement of the writ, that there is a variance in the firſt record from that in the declaration in the preſent action; yet it is ſaid, that it is not neceſſary to (*d*) ſhew the whole record in certain, but only ſo much of it as conveys the plaintiff to his action.

(*a*) 5. Ed. 4. 3. B. Dec. Tant. 2. 11.
(*b*) 37. H. 6. 31. B. Dec. Tant. 13.
(*c*) 9. H. 6. 1. B. Dec. Tant. 1.
(*d*) 34. H. 6. 4.

Sect. 12. SECONDLY, That it is not (*e*) ſufficient to ſhew that the defendants took money in order to embrace a jury, without ſhewing alſo that they actually diſpoſed of it accordingly.

(*e*) 37. H. 6. 31. F. N. B. 171.

Sect. 13. THIRDLY, That the (*f*) plaintiff muſt ſhew in certain how much was received, or otherwiſe the Court will not know for what ſum to give judgment.

(*f*) Pl. Com. 85.

Sect. 14. FOURTHLY, That the giving of money to a juror (*g*) after the verdict is not within the ſtatute, unleſs there were ſome precedent contract relating to it.

(*g*) 29. Aſſ. 29. B. Dec. Tant. 14.

Sect.

Sect. 15. FIFTHLY, That it is not (*a*) material whether the jurors gave any verdict or not, or if they did give one, whether it were true or false.

(*a*) 21. H. 6. 31. 37. H. 6. 31. B. Dec. Tant. 10. 13. F. N. B. 171. Co. Lit. 369. Dyer 95.

Sect. 16. SIXTHLY, That all the jurors and embraceors may be joined in one action, notwithstanding they severally received different sums, because all was received in order to give the same verdict, which could not but be the entire act of all the jurors. But it seems, that each defendant ought to plead severally that he did not take money in the manner as the plaintiff hath declared.

40. Ed. 3. 3. 36. H. 6. 28. B. Dec. Tant. 3, 4. F. N. B. 171. Finch 255. 21. H. 6. 20.

Sect. 17. SEVENTHLY, That the (*b*) defendants ought not to plead generally not guilty, but that they ought specially to deny the taking of the money, &c.

(*b*) B. Dec. Tant. 1. 18. Savil. 42.

Sect. 18. EIGHTHLY, That the plaintiff (*c*) shall be paid the moiety of the money due to him on a judgment in *decies tantum* before the king, because the king's moiety is not due as a debt, but as a fine; and wherever the king is intitled to a fine from the suit of a subject, the plaintiff shall first be satisfied.

(*c*) 41. E. 3. 15. 44. E. 3. 36. B. Dec. Tant. 5, 7.

Sect. 19. NINTHLY, That the husband (*d*) alone may bring a *decies tantum*, for an embracery in a former action brought by him and his wife, because by a *decies tantum* money only is to be recovered wherein the wife can claim no share.

(*d*) 7. H. 4. 2, 3. 43. E. 3. 16. B. Dec. Tant. 9. 19.

Sect. 20. TENTHLY, That he who buys land to maintain a suit at a lower price than it is known to be worth, is as much within the statute, for so much as the (*e*) land is worth more than he gave, as if he had received it in money.

(*e*) 41. Ed. 3. 9. B. Dec. Tant. 4. 1. R. Abr. 579.

Sect. 21. ELEVENTHLY, That this being a popular action may be barred by the (*f*) king's release, being made before any action brought, but that it cannot be barred by the release of the party grieved; and from the same ground also it follows, that the party grieved needs not in such action declare of any damages done to him by the embracery; but if he do, it is said that he (*g*) ought to lay them severally against each defendant, or else that his writ shall abate, unless he will release them: but perhaps there may be good reason to question this opinion; for why may not the damages be as well recovered, as the action jointly laid against all the defendants?

(*f*) 5. E. 4 2. 3. b. 2. c. 26. 64. B. Dec. Tant. 15. C. Eliz. 138. 583. 11. Co. 65. 3. Inst. 194.

(*g*) 44. E. 3. 36. B. Dec. Tant. 7.

Sect.

(a) 44 E. 3. 22. 47. E. 3. 4. B. Dec. 6. 8.

Sect. 22. TWELFTHLY, That no (*a*) proceſs of outlawry lies in this action, but only a *capias* or diſtreſs infinite, upon a *nihil* returned, and that ſuch diſtreſs ought to be of the lands which the defendants had at the time of the writ of *decies tantum* purchaſed, and not of thoſe which they had at the time of the inqueſt; and that no *capias* (*b*) into a foreign county lies againſt the jurors, becauſe it ſhall be preſumed that they are in the county wherein they were returned on the jury; but clearly this reaſon can no way be extended to the embraceors: and perhaps it may be overfavourable to carry it ſo far in relation to the jurors, eſpecially ſince the diſtreſs infinite can only affect the lands which they had at the time of the *decies tantum*, before which they may poſſibly have ſold thoſe which they had at the return of the *venire*; and why ſhould not the ſheriff's preſent return that the defendants have nothing in the county, overbalance the preſumption chiefly grounded on the former return, with which the preſent is not inconſiſtent, being made at a ſubſequent time?

(b) 47. E. 3. 4.

Vide 6. E. 4. 11. a. 2. R. Abr. 277.

CHAP.

CHAPTER THE EIGHTY-SIXTH.

Of the OFFENCE of BUYING or SELLING a PRETENDED TITLE.

FOR the better underſtanding the offence of buying or ſelling a pretended title, I ſhall conſider:

1. How it is reſtrained by common law.

2. How by ſtatute.

As to THE FIRST POINT, *viz.* How it is reſtrained by common law.

Sect. 1. It ſeemeth to be a high offence at common law, to buy or ſell any doubtful title to lands known to be diſputed, to the intent that the buyer may carry on the ſuit, which the ſeller doth not think it worth his while to do, and on that conſideration ſells his pretenſions at an under-rate. And it ſeemeth not to be material whether the title ſo ſold be a good or bad one, or whether the ſeller were in poſſeſſion or not, unleſs his poſſeſſion were lawful and unconteſted. For all practices of this kind are by all means to be diſcountenanced, as manifeſtly tending to oppreſſion, by giving opportunities to great men to purchaſe the diſputed titles of others, to the great grievance of the adverſe parties, who may often be unable or diſcouraged to defend their titles againſt ſuch powerful perſons, which perhaps they might ſafely enough maintain againſt their proper adverſary. Moore 751. Hobart 115. Plowden 88.

As to THE SECOND POINT, *viz.* How far offences of this kind are reſtrained by ſtatute.

Sect. 2. It is recited by 1. Rich. 2. c. 9. "That many perſons having true title to lands, and alſo in perſonal actions were wrongfully delayed of their rights and actions, by means that the defendants did commonly make gifts and feoffments of their lands in debate, and of their goods, to lords, and other great men, againſt whom the ſaid purſuants, for menace that was made to them, neither could nor durſt make their purſuits; and alſo that many perſons oftentimes uſed to diſſeiſe others, and anon after ſuch diſſeiſin to make divers feoffments, ſometimes to lords and

other great men to have maintenance, and sometimes to persons unknown, to the intent to delay the said disseisees, &c." and it is thereupon enacted, "That from thence-"forth no gift, or feoffment, of lands, tenements, or "goods, be made, by such fraud or maintenance; and "that if any be in such wise made, they shall be holden "for none and of no value; and that the said disseisees "shall from thenceforth have their recovery against the "first disseisor, as well of the lands and tenements as of "their double damages, without having regard to such "alienations, so that the disseisees commence their suits "within the year next after the disseisin done."

B. Feoffments *de terres*, 119. Co. Lit. 369.

Sect. 3. In the construction of the statute it hath been holden, that feoffments of this kind are only void in respect of the disseisees, but that they are effectual between the feoffor and feoffee, &c.

† And it is enacted by stat. 13. Ed. 1. c. 49. "That no "person of the king's house shall buy any title whilst the "thing is in dispute, on pain of both the buyer and sel-"ler being punished at the king's pleasure."

Ld. Ray. 537.

Sect. 4. And it is further enacted by 32. Hen. 8. c. 9. "That no person or persons whatsoever shall bargain, buy, "or sell, or by any ways or means obtain, get, or have "any pretended rights or titles, or take, promise, grant, "or covenant to have any right or title, of any person or "persons, in, or to any manors, lands, tenements, or "hereditaments, but if such person or persons which shall "so bargain, sell, give, grant, covenant, or promise the "same, their ancestors, or they by whom he or they "claim the same, have been in possession of the same, or "of the reversion or remainder thereof, or taken the rents "or profits thereof, by the space of one whole year next "before the said bargain, covenant, grant, or promise made; "upon pain that he that shall make any such bargain, sale, "promise, covenant, or grant, to forfeit the whole value "of the lands, tenements, or hereditaments so bargained, "sold, promised, covenanted, or granted, contrary to the "form of this act. And the buyer or taker thereof, know-"ing the same, to forfeit also the value of the said lands, "tenements, or hereditaments so by him bought, or taken, "as is above said. The one half of the said forfeitures to "be to the king, and the other half to the party that will "sue for the same in any of the king's courts of record, by "action of debt, bill, plaint, or information. In which "action, bill, plaint, or information, no essoin, protec-"tion, wager of law, nor injunction shall be allowed."

Sect.

Sect. 5. But it is provided by the ſaid ſtatute, "That it "ſhall be lawful to any perſon, being in lawful poſſeſſion, "by taking of the yearly farm, rents, or profits, of, or for "any manors, lands, tenements, or hereditaments, to buy, "obtain, get, or have by any reaſonable way or means, "the pretenced right or title of any other perſon or perſons, "hereafter to be made to, of, or in ſuch manors, lands, "tenements, or hereditaments, whereof he or they ſhall ſo "be in lawful poſſeſſion, any thing in the ſaid act con-"tained to the contrary notwithſtanding."

Sect. 6. And it is further provided, "That the ſaid ſta-"tute ſhall not extend to charge any perſon with any of "the abovementioned penalties, except ſuch perſon be ſued "for the offence within one year."

In the conſtruction of this ſtatute the following opinions have been holden:

Sect. 7. I. That it is not material whether any ſuit be pending concerning the lands contracted for, or not, whereas the ſtatutes ſet forth in the precedent chapters extended only to contracts concerning lands which were actually in ſuit. Plowd. 83.

Sect. 8. II. That in an action on this ſtatute, the plaintiff needs not recite it, becauſe the judges are bound *ex officio* to take notice of it, being of a public nature; but that if he do recite it, he muſt, at his peril, take care to recite it certainly, becauſe it is the ground of his action; and the Court will not aid him by intending that there is another ſtatute to maintain his action, different from that whereon he himſelf hath founded it. Lit. Rep 369. B. 2. c. 25. ſ. 101. Plowd. 84. C. Car. 233. Dyer 74. Con. 1. And. 76.

Sect. 9. III. That in ſuch an action againſt the buyer of a pretended title it ought expreſsly to appear, that the defendant did know that the ſeller had not been in poſſeſſion the year before; and *vice verſâ*, that in ſuch an action by the buyer the contrary ought to appear, for otherwiſe it may be intended, that he was *particeps criminis*, and therefore ought not to have any ſhare of the penalty. 1. Leon. 167. 1. Burr. 300.

Sect. 10. IV. That it is not ſufficient to ſhew, that the ſeller had not been in poſſeſſion, &c. a year before, without expreſſly averring that he had a pretended right or title, becauſe that is the point of the action. Lit. Rep. 369. Dyer 74. Plowd. 80. 88. C. Car. 233.

Sect. 11. V. That it is not (*a*) ſufficient to ſet forth the value of the land at the time of the conveyance executed, (*a*) C. Car. 233.

without ſhewing the value at the time of the bargain, becauſe the forfeiture is governed by the latter.

(a) 4. Co. 26. Co. Lit. 369. Moore 655. Plowd. 80. 88. Dy. 74. 374. (b) Co. Lit. 369. Con. Mo. 266. Dyer 374. (c) Co. Lit. 369.

Sect. 12. VI. That a contract for (*a*) cuſtomary right to a copyhold eſtate, or for a leaſe for (*b*) years, is as much within the ſtatute as a contract for the fee ſimple; for the words of the ſtatute are, "*any right or title*," and ſuch contracts are as much within the miſchief intended to be redreſſed by the ſtatute as any others can be: but it is (*c*) ſaid, that a leaſe for years made with an intent to try the title in ejectment, is not within the meaning of the ſtatute, becauſe it is in a kind of courſe of law, unleſs it be made to a powerful man to ſway the cauſe.

Plowd. 81. 85. Dyer 74.

Sect. 13. VII. That in an action for the making ſuch a leaſe for years, it is not neceſſary preciſely to ſet forth the commencement and end of it, becauſe the plaintiff is ſuppoſed to be a ſtranger to it.

1. Leon. 166. 1. And. 76, 77.

Sect. 14. VIII. That a leaſe for years by one out of poſſeſſion being made off the land, is as much within the ſtatute as if it had been made upon the land, though it be wholly void in law; for it is a leaſe in reputation, and taken for ſuch among the vulgar, and tends as much to diſquiet the poſſeſſion as if it had been effectual in law.

B. Main. 38. Plowd. 88. 89. Co. Lit. 369.

Sect. 15. IX. That no conveyance made by one who hath the unconteſted poſſeſſion, and undiſputed abſolute propriety of lands, is any way within the meaning of the ſtatute, becauſe it no way favours of maintenance, and can be prejudicial to no one; from whence it follows, that a diſſeiſor obtaining the releaſe of the diſſeiſee, or a mortgagor redeeming his land, are in no danger of the ſtatute in reſpect of any contract by them made concerning ſuch land, after ſuch releaſe or redemption.

Plowd. 88, 89. Moor 655.

Sect. 16. X. That one who gains the poſſeſſion of lands by virtue of a judgment at law in affirmance of an ancient title, cannot come within the meaning of this ſtatute in reſpect of any leaſe made of ſuch lands; for it can never be imagined that it was the intent of the ſtatute to oblige all perſons who ſhould recover their lands to occupy them themſelves, which would be generally inconvenient, and often wholly impracticable; and therefore it muſt be admitted from the neceſſity of the caſe, that ſuch perſons may lawfully leaſe their lands and houſes to proper tenants, to be manured and occupied for the uſual rents: but if it ſhall appear that the title to ſuch lands is ſtill conteſted notwithſtanding ſuch recovery, and that ſuch leaſe was in truth deſigned

deſigned for the maintenance of the title, I can ſee no reaſon why it ſhould not be as much within the ſtatute as any caſe whatſoever.

However there ſeems to be no doubt, but that if a diſſeiſee enter upon a diſſeiſor, being in poſſeſſion of the land under a pretended title, and immediately ſell it to a ſtranger, he is as much within the ſtatute as if he had been out of poſſeſſion at the time of ſuch ſale; for notwithſtanding his entry was lawful, and he had both the abſolute property and poſſeſſion of the land, yet inaſmuch as the diſſeiſor claims a title to it which is yet in diſpute, ſuch a ſale by the diſſeiſee ſeems within the intent of the ſtatute, which meant abſolutely to reſtrain all perſons from transferring their diſputed titles to any ſtranger whatſoever. 1. Leon. 166, 167. But Co. Lit. 369. ſeems contrary.

But it is ſaid, that ſuch a ſale by a father to his ſon and heir apparent, is excepted out of the general purview of the ſtatute by common reaſon, which, by the ties of nature as well as of intereſt, obliges ſuch a ſon to maintain his father; yet it hath been holden, that ſuch a ſale to a brother of the half blood is within the ſtatute. Savil 95, 96. 1. Leon. 167. Modern 636.

Sect. 17. XI. It is ſaid, that the abovementioned proviſo, "that one who is in lawful poſſeſſion by taking the yearly "rents or profits of lands, &c. may lawfully buy the pre-"tended right of any other perſon by reaſonable means," is no more than the law would have implied, if it had not been expreſſed; for ſuch a contract cannot poſſibly be to the wrong of any one, and tends rather to quiet ſuits than to promote them. 1. Leon. 167. Savil 94. 96.

And from the like reaſon alſo it is ſaid, that a diſſeiſor may lawfully get the releaſe of the diſſeiſee, though his poſſeſſion was unlawful; and it ſeems clear, that ſuch a releaſe cannot come within the meaning of the ſtatute, if the diſſeiſee had the true right, and no other had any pretence of title to the land; for in ſuch caſe it is clear, that the end of the releaſe is not for maintenance, but for the ſettlement of all diſputes: but if ſuch a diſſeiſee had had but a conteſted title, and ſuch releaſe were intended only to enable the diſſeiſor to defend himſelf with the dubious title of his diſſeiſee, ſurely it cannot but be as much within the meaning of the ſtatute, as any conveyance to one wholly out of poſſeſſion. Co. Lit. 369.

However it ſeems clear, that thoſe inſtances in the ſaid proviſo, by which it is ſhewn how it ſhall appear that the perſons who are permitted to contract for pretended titles Co. Lit. 369. b.

are in poſſeſſion, as by the receiving of rent, &c. are only put for examples, and that thoſe who are any way whatſoever lawfully ſeiſed in poſſeſſion, reverſion, or remainder, are within the benefit of the proviſo; but it ſeems clear, that they can only juſtify the taking ſuch a conveyance as will ſtrengthen the eſtate whereof they are ſeiſed, and that they cannot take a covenant from a ſtranger to convey the land to them, when he ſhall have recovered it on a pretended right, becauſe ſuch a covenant ſeems clearly to favour as much of maintenance, as if they had been ſtrangers to the land.

Sect. 18. And it is enacted by the 31. Eliz. c. 5. ſ. 4. "That the offence of buying titles may be laid in any county, at the pleaſure of the informer."

CHAP-

CHAPTER THE EIGHTY-SEVENTH.

Of SEDUCING ARTIFICERS.

Sect. 1. BY 5 Geo. 1. c. 27. f. 1. it is recited, that "Whereas divers ill-diſpoſed perſons, as well "foreigners as ſubjects of this kingdom by confederacy "with foreigners, have of late drawn away and tranſported, "and have alſo made divers attempts to entice, draw away, "and tranſport, ſeveral artificers and manufacturers of and "in wool, iron, ſteel, braſs and other metals, clockmakers, "watchmakers, and divers other manufacturers of *Great* "*Britain*, out of his Majeſty's dominions into foreign "countries, by entering into contracts with them to give "them greater wages and advantages than they have or can "reaſonably expect within this kingdom, and by making "them large promiſes, and uſing other arts to inveigle and "draw them away: and whereas there is great danger, that "by means of theſe and ſuch like practices many great and "profitable branches of the trades and manufactures of "this kingdom may be tranſplanted into foreign countries: "therefore for the preventing the like practices for the fu- "ture, be it enacted, that if at any time hereafter any per- "ſon or perſons ſhall contract with, entice, endeavour to "perſuade or ſolicit, any manufacturer or artificer of or in "wool, iron, ſteel, braſs, or any other metal, clockmaker, "watchmaker, or any other artificer or manufacturer of "*Great Britain*, to go out of this kingdom into any foreign "country out of his Majeſty's dominions, and ſhall be "lawfully convicted thereof upon any indictment or in- "formation which ſhall be preferred or brought againſt "him or them in any of his Majeſty's courts at *Weſtminſter*, "or at the aſſizes or general gaol-delivery or quarter-ſeſ- "ſions of the peace for the county, riding, or diviſion, "where ſuch offence ſhall be committed, the perſon and "perſons ſo convict ſhall be fined any ſum not exceeding "one hundred pounds for ſuch firſt offence, according to "the diſcretion of the court in which ſuch conviction ſhall "be, and ſhall be impriſoned for the ſpace of three months, "and until ſuch fine ſhall be paid: and if any perſon "or perſons, having been once convict as aforeſaid, ſhall

Perſons convicted of contracting with or enticing, &c. any artificer to go into a foreign country, ſhall be fined not exceeding 100l. for the firſt offence, and be impriſoned for three months;

And for the second offence shall be fined discretionally, and imprisoned for twelve months.

" offend again, and be so convict a second time of the like " offence, then and in such case the person so convict a se- " cond time shall be fined at the discretion of the court " where such conviction shall be, and be imprisoned for " twelve months, and until such fine shall be paid."

Prosecution in twelve months after the offence.

Sect. 2. By 5. Geo. 1. c. 27. s. 2. it is " provided ne- " vertheless, that no person or persons shall be prosecuted " for any of the offences aforesaid, unless such prosecution " shall be begun within the space of twelve months next af- " ter such offence shall be committed."

After May 1 1719, any artificer going into a foreign country, there to exercise his trade, and not returning in six months after warning given him by the ambassador, &c. shall be incapable of taking any legacy, &c.

Sect. 3. By 5. Geo. 1. c. 27. s. 3. it is further enacted, " That if any of his Majesty's subjects within this kingdom, " being such artificer or manufacturer as aforesaid, shall, at " any time after the first day of *May* 1719, go into any " country out of his Majesty's dominions, there to use or " exercise, or to teach, any of the said trades or manu- " factures to foreigners, or in case any of his Majesty's " subjects now being, or who hereafter shall be, in any such " foreign country out of his Majesty's dominions as afore- " said, and there using or exercising any of the said trades " or manufactures herein before mentioned, shall not re- " turn into this realm within six months next after warn- " ing shall be given to him by the ambassador, envoy, re- " sident, minister, or consul of the crown of *Great Britain* " in the country in which such artificer shall be, or by any " person authorized by such ambassador, envoy, resident, " minister, or consul, or by one of his Majesty's secretaries " of state for the time being, and from thenceforth conti- " nually inhabit and dwell within this realm; then and in " such case every such person or persons shall be from " thenceforth incapable of taking any legacy that shall be " devised to him within this kingdom, or of being an ex- " ecutor or administrator to any person or persons within " this kingdom; and shall be incapable of taking any lands, " tenements, or hereditaments, within this kingdom, by " descent, devise, or purchase; and also forfeit all his lands, " tenements, hereditaments, goods and chattels within this " kingdom, to his Majesty's use; and shall from thence- " forth be, and be deemed and taken to be, an alien, and " shall be out of his Majesty's protection."

Forfeit all his lands, &c. and be deemed an alien.

Justices of peace may, on complaint of any offence against this act, issue their warrant for the apprehending of the offender, and bind him to appear at the assizes, &c.

Sect. 4. By 5. Geo. 1. c. 27. s. 4. it is further enacted, " That from and after the said first day of *May* 1719, upon " complaint made upon oath before any justice or justices " of the peace, that any person or persons is or are en-

" deavouring

" deavouring to ſeduce or draw away any ſuch manufac-
" turer or artificer as aforeſaid out of his Majeſty's domi-
" nions, for any the purpoſes aforeſaid, or that any ſuch
" manufacturer or artificer as aforeſaid hath contracted,
" promiſed, or is preparing, to go out of his Majeſty's do-
" minions for any of the purpoſes aforeſaid, then and in
" ſuch caſe it ſhall and may be lawful to and for the juſtice
" or juſtices of the peace unto whom ſuch complaint ſhall
" be made, to ſend forth his warrant to bring the perſon
" and perſons ſo complained of before him or them, or
" ſome other of his Majeſty's juſtices of the peace for the
" ſame county, riding, diviſion, or city: and if, when ſuch
" perſon or perſons ſhall be ſo brought before ſuch juſtice or
" juſtices, it ſhall appear to ſuch juſtice or juſtices, by the
" oath or oaths of one or more credible witneſs or witneſſes,
" or by the confeſſion of the party or parties ſo brought be-
" fore him or them, that the party ſo complained of was
" guilty of any of the ſaid offences, then and in ſuch caſe it
" ſhall and may be lawful to and for ſuch juſtice and juſtices
" to bind the perſon ſo charged to appear at the next aſſizes,
" general gaol-delivery, or quarter-ſeſſions of the peace, for
" the county, city, riding, or diviſion, where ſuch offence
" ſhall be committed, to anſwer the premiſes, with reaſon-
" able ſureties for ſuch his appearance; and in caſe ſuch
" perſon or perſons ſhall refuſe or neglect to give ſuch ſe-
" curity, then and in ſuch caſe it ſhall and may be lawful
" to and for ſuch juſtice and juſtices to commit the perſon
" or perſons ſo refuſing to the county gaol, there to be
" kept until the next aſſizes or next quarter-ſeſſions of the
" county, city, riding, or diviſion, where ſuch commitment
" ſhall be, at the election of ſuch juſtice of the peace, and
" until he, ſhe, or they, ſhall be delivered by due courſe of
" law; and in caſe any ſuch artificer or manufacturer ſhall
" be convict, upon any indictment to be preferred againſt
" him at ſuch aſſizes or general gaol-delivery, or quarter-
" ſeſſions of the peace, as aforeſaid, of any ſuch promiſe
" or contract, or preparation to go abroad beyond the ſeas,
" for any of the purpoſes aforeſaid, then and in ſuch caſe
" the perſon ſo convict ſhall give ſuch ſecurity to his Ma-
" jeſty, his heirs, and ſucceſſors, not to depart out of his
" Majeſty's dominions for any of the purpoſes aforeſaid,
" as ſuch Court ſhall think reaſonable, and ſhall be impri-
" ſoned until ſuch ſecurity ſhall be given."

Perſons refuſing to give ſuch ſecurity may be committed.

Perſons convicted ſhall give ſecurity not to depart the kingdom, or be impriſoned till ſuch ſecurity given.

Sect. 5. And by 5. Geo. 1. c. 27. ſ. 5. " If any of the
" abovementioned offences ſhall be committed in that part
" of *Great Britain* called *Scotland*, the ſame ſhall be proſe-
" cuted in the court of juſticiary or the circuits there."

Offenders in Scotland to be proſecuted in the court of juſticiary or circuits there.

Sect.

Rex v. Metcalf, 4 Burr. 2026.

Sect. 6. It is said to have been decided on this statute, that if a defendant be convicted on one information for having seduced four different artificers, yet the Court can only inflict one penalty.

† *Sect.* 7. By 23. Geo. 2. c. 13. it is further enacted,

Persons convicted of seducing artificers,

"That if any person or persons shall contract with, entice, "persuade, or endeavour to persuade, solicit, or seduce, any "manufacturer, workman, or artificer of or in wool, mohair, cotton, or silk, or of or in any manufactures made "up of wool, mohair, cotton, or silk, or any of the said "materials mixed one with another, or of or in iron, steel, "brass, or any other metal, or any clockmaker, watchmaker, "or any other manufacturer, workman, or artificer of or "in any other of the manufactures of *Great Britain* or *Ire-*"*land*, of what nature or kind soever, to go out of this "kingdom, or out of the kingdom of *Ireland*, into any foreign country, not within the dominions of or belonging "to the crown of *Great Britain*; and shall be lawfully convicted thereof, upon any indictment or information to "be preferred or brought against him, her, or them, in his "Majesty's court of king's bench at *Westminster*, or by indictment at the assizes or general gaol-delivery for the "county, riding, or division, wherein such offence shall be committed (if such offence shall be committed in that "part of *Great Britain* called *England*), or by indictment in "the court of justiciary or any of the circuit courts in *Scot-*"*land* if such offence shall be committed in that part of "*Great Britain* called *Scotland*), or by indictment or information in his Majesty's court of king's bench at *Dublin* "(if such offence shall be committed in *Ireland*), the person or persons so convicted shall, for every artificer, "workman, or manufacturer, so by him, her, or them re-"spectively contracted with, enticed, persuaded, solicited, or "seduced, severally forfeit the sum of five hundred pounds to forfeit 500l and be imprisoned for twelve months. "of lawful money of *Great Britain*; and shall also suffer "imprisonment in the common gaol of the county, riding, "division, shire, or stewartry, wherein such offender or Second offence to forfeit 1000l. "offenders shall be respectively convicted, for the space of "twelve calendar months, without bail or mainprize, and "until such forfeiture shall be paid; and in case of a further conviction, in manner before prescribed by this act, "for or upon a second or other subsequent offence of the "same kind, the person or persons so again offending shall, "upon every second or other subsequent conviction, severally forfeit for every person so by him, her, or them respectively contracted with, enticed, persuaded, solicited, or "seduced, the sum of one thousand pounds of lawful money of *Great Britain*; and shall also suffer imprisonment "in

" in the common gaol of the county, riding, diviſion, ſhire, " or ſtewartry, wherein ſuch offender or offenders ſhall be " reſpectively convicted, for the ſpace of two years, with- " out bail or mainprize, and until ſuch forfeiture ſhall be " paid." and be impriſoned for two years.

† *Sect.* 8. By 23. Geo. 2. c. 13. ſ. 2. it is provided, " that " no perſon ſhall be proſecuted for any of the offences " aforeſaid, unleſs ſuch proſecution ſhall be commenced " within the ſpace of twelve calendar months next after " ſuch offence ſhall be committed."

† *Sect.* 9. It is ſaid, that this latter ſtatute, being upon the ſame ſubject with the former, virtually repeals the higher degree of puniſhment on perſons whoſe offences are within both the ſtatutes. Rex v. Cater, 4. Burr. 2026.

† *Sect.* 10. It is alſo ſaid, that this latter ſtatute leaves no diſcretion in the Court with reſpect to the penalty, but that the puniſhment directed by it is peremptory. *Per* ASTON, *Juſtice*, 4. Burr. 2026.

† *Sect.* 11. By 22. Geo. 3. c. 60. it is enacted, " That if " any perſon or perſons ſhall contract with, entice, perſuade, " or endeavour to ſeduce or encourage, any artificer or " workman concerned or employed, or who ſhall have " worked at, or been employed in, printing callicoes, cot- " tons, muſlins, or linens, of any ſort, or in making or " preparing any blocks, plates, engines, tools, or utenſils, " for ſuch manufactory, to go out of *Great Britain* to any " parts beyond the ſeas, and ſhall be convicted thereof, " upon indictment or information in the court of king's " bench at *Weſtminſter*, or by indictment at the aſſizes or " general gaol-delivery for the county or place wherein " ſuch offence ſhall be committed, or the offender or of- " fenders ſhall live or reſide, or by indictment in the court " of juſticiary or any of the circuit courts in *Scotland*, as " the caſe may be; every perſon ſo convicted ſhall, for " every artificer ſo contracted with, enticed, perſuaded, en- " couraged, or ſeduced, or attempted ſo to be, forfeit and " pay the ſum of five hundred pounds of lawful money of " *Great Britain*, and ſhall be committed to the common " gaol for the county, place, or ſtewartry, wherein the of- " fender or offenders ſhall be convicted, there to remain, " without bail or mainprize, for the ſpace of twelve ca- " lendar months, and until ſuch forfeiture ſhall be paid; " and in caſe of a ſubſequent offence of the ſame kind, the " perſon or perſons ſo again offending ſhall, upon the like " conviction, forfeit and pay, for every perſon ſo contracted " with, enticed, perſuaded, encouraged, or ſeduced, or at- " tempted Penalty on enticing workmen employed in printing callicoes, cottons, &c.

" tempted ſo to be, the ſum of one thouſand pounds of " lawful money of *Great Britain*, and ſhall be committed " to the common gaol as aforeſaid, there to remain, with- " out bail or mainprize, for and during the term of two " years, and until ſuch forfeiture ſhall be paid."

Proſecution in twelve months.

Sect. 12. By 22. Geo. 3. c. 60. ſ. 2. it is provided, " That " no perſon ſhall be proſecuted for any of the offences " aforeſaid, unleſs ſuch proſecution ſhall be commenced " within the ſpace of twelve calendar months next after " ſuch offence ſhall be committed."

Forfeitures.

Sect. 13. By 22. Geo. 3. c. 60. ſ. 7. it is further enacted, " That one moiety of the reſpective forfeitures by this act " inflicted on offenders againſt the ſame, ſhall, when reco- " vered, go and be applied to the uſe of his Majeſty, his " heirs and ſucceſſors; and the other moiety to the uſe of " the perſon or perſons who ſhall ſue and proſecute for the " ſame reſpectively."

Limitation of actions.

Sect. 14. And by 22. Geo. 3. c. 60. ſ. 8. " If any ac- " tion or ſuit ſhall be commenced againſt any perſon for " what he ſhall do in purſuance of this act, ſuch action or " ſuit ſhall be commenced within ſix calendar months next " after the fact committed; and the perſon ſo ſued ſhall " and may file common bail, and enter a common ap- General iſſue. " pearance, and plead the general iſſue Not Guilty, and " may give this act and the ſpecial matter in evidence; and " if the plaintiff or proſecutor ſhall become nonſuit, or " ſuffer diſcontinuance, or if a verdict ſhall paſs againſt him, " or if, upon demurrer, judgment ſhall be given againſt him, Treble coſts. " then, and in any of the caſes aforeſaid, the defendant ſhall " recover treble coſts."

Penalty on perſons enticing artificers in the iron or ſteel manufactures, &c. to leave this kingdom (except to Ireland).

Sect. 15. By 25 Geo. 3. c. 67. ſ. 6. it is enacted, " That " if any perſon or perſons ſhall contract with, entice, per- " ſuade, or endeavour to ſeduce or encourage, any artificer " or workman concerned or employed, or who ſhall have " worked at or been employed, in the iron or ſteel manu- " factures in this kingdom, or in making or preparing any " tools or utenſils for ſuch manufactory, to go out of *Great* " *Britain* to any parts beyond the ſeas (except to *Ireland*), " and ſhall be convicted thereof, upon indictment or infor- " mation in the court of king's bench at *Weſtminſter*, or " by indictment at the aſſizes, or general gaol-delivery, or " quarter-ſeſſions, for the county or place wherein ſuch " offence ſhall be committed, or the offender or offenders " ſhall live or reſide, or by indictment in the court of juſ- " ticiary or any of the circuit courts in *Scotland*, as the caſe

" may

" may be; every perſon ſo convicted ſhall, for every artificer ſo contracted with, enticed, perſuaded, encouraged, or ſeduced, or attempted ſo to be, forfeit and pay the ſum of five hundred pounds of lawful money of *Great Britain*, and ſhall be committed to the common gaol for the county, place, or ſtewartry, wherein the offender or offenders ſhall be convicted, there to remain, without bail or mainprize, for the ſpace of twelve calendar months, and until ſuch forfeiture ſhall be paid: and in caſe of a ſubſequent offence of the ſame kind, the perſon or perſons ſo again offending ſhall, upon the like conviction, forfeit and pay, for every perſon ſo contracted with, enticed, perſuaded, encouraged, or ſeduced, or attempted ſo to be, the ſum of one thouſand pounds of lawful money of *Great Britain*, and ſhall be committed to the common gaol as aforeſaid, there to remain, without bail or mainprize, for and during the term of two years, and until ſuch forfeitures ſhall be paid."

For firſt offence. 500l. and twelve months imprisonment;

Second, &c. 1000l. and two years imprisonment.

Sect. 16. By 25. Geo. 3. c. 67. ſ. 7. it is provided, "That no perſon ſhall be proſecuted for any of the offences aforeſaid, unleſs ſuch proſecution ſhall be commenced within the ſpace of twelve calendar months next after ſuch offence ſhall be committed."

Proſecution to be commenced within twelve months.

Sect. 17. By 25. Geo. 3. c. 67. ſ. 8. it is further enacted, "That the ſeveral penalties and forfeitures herein before mentioned ſhall and may be ſued for and recovered by action of debt, bill, plaint, or information, in any of his Majeſty's courts of record at *Weſtminſter*, or in the court of exchequer or in the court of ſeſſion in *Scotland*, in the name of his Majeſty's attorney-general or lord advocate, or in the name of ſome officer or officers of the cuſtoms in *Great Britain* reſpectively, wherein no eſſoin, protection, privilege, wager of law, or more than one imparlance, ſhall be allowed; and that one moiety of the ſaid penalties and forfeitures ſhall go and be applied to the uſe of his Majeſty, his heirs and ſucceſſors, and the other moiety to the uſe of ſuch officer or officers of the cuſtoms as ſhall ſue and proſecute for the ſame reſpectively, after deducting the charges of proſecution from the whole."

Penalties and forfeitures how to be recovered and applied.

Sect. 18. And by 25. Geo. 3. c. 67. ſ. 9. "If any ſuit or action ſhall be commenced againſt any perſon for what he ſhall do in purſuance of this act, ſuch ſuit or action ſhall be commenced within three months next after the fact committed; and the perſon ſo ſued may file common bail, or enter a common appearance, and plead the

Limitation of actions.

" general

General iſſue. " general iſſue Not Guilty, and may give this act and the
" ſpecial matter in evidence; and if the plaintiff or proſe-
" cutor ſhall become nonſuit, or ſuffer diſcontinuance, or
" if a verdict paſs againſt him or her, or if, upon demurrer,
Treble coſts. " judgment ſhall be given againſt the plaintiff, the defendant
" ſhall recover treble coſts."

CHAP.

CHAPTER THE EIGHTY-EIGHTH.

OF EXPORTING TOOLS.

Sect. 1. BY 23. Geo. 2. c. 13. ſ. 3. it is recited, That "the exportation of the ſeveral tools or uten- "ſils made uſe of in preparing, working up, and finiſhing, "the woollen and ſilk manufactures, or any or either of "them, will enable foreigners to work up ſuch manu- "factures, and thereby greatly diminiſh the exportation of "the ſame from this kingdom; therefore, for preſerving as "much as poſſible to his Majeſty's *Britiſh* ſubjects the bene- "fits ariſing from thoſe great and valuable branches of trade "and commerce, be it enacted, That from and after the "twenty-fourth day of *June* 1750, if any perſon or perſons "in *Great Britain* or *Ireland* ſhall, upon any pretence what- "ſoever, load or put on board, or cauſe to be loaden or put "on board, of any ſhip, veſſel, or boat, which ſhall not be "bound directly to ſome port or place in *Great Britain* or "*Ireland*, or to ſome other of the dominions of the crown "of *Great Britain*, any ſuch tools or utenſils as are com- "monly uſed in, or are proper for the preparing, working "up, or finiſhing of the woollen or ſilk manufactures, or "any or either of them, or any parts or parcels of ſuch "tools or utenſils, by what name or names ſuch tools or "utenſils ſhall or may be called or known, the perſon or "perſons ſo offending ſhall, for every ſuch offence, not "only forfeit and loſe all ſuch tools and utenſils, or parts "or parcels thereof, which ſhall be ſo loaden or put on "board as aforeſaid, but alſo the ſum of two hundred "pounds of lawful money of *Great Britain*, to be recovered "by action of debt, bill, plaint, or information, in any of "his Majeſty's courts of record at *Weſtminſter*, or in the "court of ſeſſion in *Scotland*, or in any of the four courts "at *Dublin* reſpectively, wherein no eſſoin, protection, pri- "vilege, or wager of law, ſhall be allowed, or more than "one imparlance."

Perſons exporting utenſils of the woollen and ſilk manufactures,

ſhall forfeit the tools and 200l.

Sect. 2. By 23. Geo. 2. c. 13. ſ. 4. "It ſhall and may "be lawful to and for any officer of his Majeſty's cuſtoms

Officers of the cuſtoms impowered to ſeize tools found on board ſhips bound to foreign parts;

"in

" in *Great Britain*, and for any officer of the revenue in " *Ireland*, to ſeize and ſecure in ſome or one of his Majeſty's " warehouſes all ſuch tools or utenſils by this act prohi- " bited to be exported as ſuch officer ſhall find or diſcover " to be laid or put on board of any ſhip, veſſel, or boat, " which ſhall not be bound directly to ſome port or place " in *Great Britain* or *Ireland*, or to ſome other of the do- " minions of the crown of *Great Britain*, and every officer " who ſhall ſeize and ſecure any of the ſaid tools or utenſils " ſhall be fully and abſolutely indemnified for ſo doing; " and all tools or utenſils ſo ſeized and ſecured as aforeſaid

To be ſold after condemnation.

" ſhall, after condemnation thereof in due courſe of law, " be publicly ſold to the beſt bidder, and one moiety of the " produce ariſing by the ſale of ſuch tools and utenſils ſhall " be to the uſe of his Majeſty, his heirs and ſucceſſors, and " the other moiety to the officer who ſhall ſeize and ſecure " the ſame as aforeſaid."

Captains of veſſels permitting ſuch utenſils to be put on board, to forfeit 100l.

Sect. 3. By 23. Geo. 2. c. 13. ſ. 5. " If the captain or " maſter of any ſhip, veſſel, or boat, in *Great Britain* or " *Ireland*, ſhall knowingly permit any of the ſaid tools or " utenſils by this act prohibited to be exported as aforeſaid, " to be put on board his ſaid ſhip, veſſel, or boat, every ſuch " captain or maſter ſhall, for every ſuch offence, forfeit the " ſum of one hundred pounds of lawful money of *Great* " *Britain*, to be ſued for and recovered in the ſame manner " as the penalties by this act inflicted upon perſons ex- " porting the ſaid tools or utenſils are to be ſued for and

Captains of his Majeſty's ſhips to forfeit 100l. and to be caſhiered.

" recovered; and if the ſaid ſhip, veſſel, or boat, belongs to " his Majeſty, his heirs or ſucceſſors, then the captain or " maſter thereof ſhall not only forfeit the ſum of one hun- " dred pounds of lawful money of *Great Britain*, to be ſued " for and recovered as aforeſaid, but ſhall alſo forfeit his " employment, and be incapable of any office or employ- " ment under his Majeſty, his heirs or ſucceſſors."

Officer of the cuſtom-houſe, ſigning cockets, &c. for the exporting ſuch tools,

Sect. 4. By 23. Geo. 2. c. 13. ſ. 6. " If any cuſtomer, " comptroller, ſurveyor, ſearcher, waiter, or other officer " of the cuſtoms in *Great Britain*, or any officer of the re- " venue in *Ireland*, ſhall take, or knowingly or willingly " ſuffer to be taken, any entry outward, or ſhall ſign any " cocket, warrant, or ſufferance, for the ſhipping or export- " ing of any of the ſaid tools or utenſils by this act prohi- " bited to be exported, or ſhall knowingly or willingly per- " mit or ſuffer the ſame to be done, directly or indirectly, " contrary to the true intent and meaning of this act, every " ſuch cuſtomer, comptroller, ſurveyor, ſearcher, waiter, or " other officer of the cuſtoms in *Great Britain*, or officer of " the revenue in *Ireland*, ſo offending, ſhall forfeit the ſum

" of

" of one hundred pounds of lawful money of *Great Britain*, to forfeit 100l.
" to be ſued for and recovered as aforeſaid; and ſhall alſo and his em-
" forfeit his office, and be incapable of any office or em- ployment.
" ployment under his Majeſty, his heirs or ſucceſſors."

† *Sect.* 5. By 23. Geo. 2. c. 13. ſ. 7. " One moiety of One moiety
" the reſpective forfeitures by this act inflicted upon of- to the king,
" fenders againſt the ſame, ſhall, when recovered, go and the other to
" be applied to the uſe of his Majeſty, his heirs and ſuc- the proſe-
" ceſſors, and the other moiety to the uſe of the perſon or cutor.
" perſons who ſhall ſue and proſecute for the ſame re-
" ſpectively."

† *Sect.* 6. And by 23. Geo. 2. c. 13. ſ. 8. " If any ſuit Limitation of
" or action ſhall be commenced againſt any perſon for what actions.
" he ſhall do in purſuance of this act, ſuch action ſhall be
" commenced within ſix months after the fact committed;
" and the perſon ſo ſued may file common bail, or enter a
" common appearance, and plead the general iſſue Not General iſſue.
" Guilty, and may give this act and the ſpecial matter in
" evidence; and if the plaintiff or proſecutor ſhall become
" nonſuit, or ſuffer diſcontinuance, or if a verdict paſs
" againſt him, or if, upon demurrer, judgment be given Treble coſts.
" againſt him, the defendant ſhall recover treble coſts."

† *Sect.* 7. By 14. Geo. 3. c. 71. it is recited, That " the Perſons ſhip-
" exportation of the ſeveral tools or utenſils made uſe of ping tools uſed
" in preparing, working up, and finiſhing the cotton and in the cotton
" linen manufactures of this kingdom, or any or either of or linen ma-
" them, or any other goods wherein cotton and linen, or nufactures, in
" either of them, are uſed, will enable foreigners to work order to ex-
" up ſuch manufactures, and thereby greatly diminiſh the port the ſame.
" exportation of the ſame from this kingdom: therefore
" it is enacted, that if at any time after the firſt day of
" *July* 1774, any perſon or perſons in *Great Britain* or
" *Ireland* ſhall, upon any pretence whatſoever, load or put
" on board, or cauſe to be laden or put on board, of any
" ſhip, veſſel, or boat, which ſhall not be bound directly to
" ſome port or place in *Great Britain* or *Ireland*, any ſuch
" tools or utenſils as are commonly uſed in, or are proper
" for the preparing, working up, or finiſhing, of the cotton
" or linen manufactures, or any or either of them, or any
" other goods wherein cotton and linen, or either of them,
" are uſed, or any parts or parcels of ſuch tools or utenſils,
" by what name or names the ſame ſhall or may be called
" or known; the perſon or perſons ſo offending ſhall, for
" every ſuch offence, not only forfeit and loſe all ſuch tools to forfeit all
" and utenſils, or parts or parcels thereof, which ſhall be ſuch tools, &c.
" ſo laden or put on board as aforeſaid, but alſo the ſum of and 200l.

" two hundred pounds of lawful money of *Great Britain*, " to be recovered by action of debt, bill, plaint, or information, in any of his Majeſty's courts of record at *Weſtminſter*, or in the court of ſeſſion in *Scotland*, or in any of " the four courts of *Dublin* reſpectively, wherein no eſſoin, " protection, privilege, or wager of law, ſhall be allowed, " or more than one imparlance."

Officers to ſeize all tools, &c.

† *Sect.* 8. By 14. Geo. 3. c. 71. ſ. 2. " It ſhall and may " be lawful to and for any officer of his Majeſty's cuſtoms " in *Great Britain*, and for any officer of the revenue in " *Ireland*, to ſeize and ſecure, in ſome or one of his Majeſty's " warehouſes, all ſuch tools or utenſils, or parts or parcels " thereof, by this act prohibited to be exported, as ſuch " officer ſhall find or diſcover to be laid or put on board of " any ſhip, veſſel, or boat, which ſhall not be bound directly " to ſome port or place in *Great Britain* or *Ireland*, and that " every officer who ſhall ſeize and ſecure any of the ſaid " tools or utenſils, or parts or parcels thereof, ſhall be fully " and abſolutely indemnified for ſo doing; and all tools and " utenſils, or parts or parcels thereof, ſo ſeized and ſecured " as aforeſaid, ſhall, after condemnation thereof in due " courſe of law, be publicly ſold to the beſt bidder, and " one moiety of the produce ariſing by the ſale of ſuch " tools and utenſils ſhall be to the uſe of his Majeſty, his " heirs and ſucceſſors. and the other moiety to the officer " who ſhall ſeize and ſecure the ſame as aforeſaid."

which may be publicly ſold, &c.

Maſter permitting ſuch tools to be exported, forfeits 200l.

† *Sect.* 9. By 14. Geo. 3. c. 71. ſ. 3. " If the captain " or maſter of any ſhip, veſſel, or boat, in *Great Britain* " or *Ireland*, ſhall knowingly permit any tools or utenſils, by this act prohibited to be exported as aforeſaid, " to be put on board his ſaid ſhip, veſſel, or boat, every ſuch " captain or maſter ſhall, for every ſuch offence, forfeit the " ſum of two hundred pounds of lawful money of *Great* " *Britain*, to be ſued for and recovered in ſuch manner as " the penalties by this act upon perſons exporting the ſaid " tools and utenſils are to be ſued for and recovered: and if " the ſaid ſhip, veſſel, or boat, belongs to his Majeſty, his " heirs or ſucceſſors, then the captain or maſter thereof " ſhall not only forfeit the ſum of two hundred pounds, " to be ſued for and recovered as aforeſaid, but ſhall alſo " forfeit his employment, and be incapable of any office or employment under his Majeſty, his heirs or ſucceſſors."

and captain forfeits 200l. and his commiſſion.

Officer allowing an entry of ſuch prohibited utenſils, to forfeit 200l. and his office.

† *Sect.* 10. By 14, Geo. 3. c. 71. ſ. 4. " If any cuſtomer, " comptroller, ſurveyor, ſearcher, waiter, or other officer

" of

" of the cuſtoms in *Great Britain*, or any officer of the re-
" venue in *Ireland*, ſhall take, or knowingly or willingly
" ſuffer to be taken, any entry outward, or ſhall ſign any
" cocket, warrant, or ſufferance, for the ſhipping or ex-
" porting of any of the ſaid tools or utenſils by this act pro-
" hibited to be exported, or ſhall knowingly or willingly
" permit or ſuffer the ſame to be done, directly or indi-
" rectly, contrary to the true intent and meaning of this
" act, every ſuch cuſtomer, comptroller, ſurveyor, ſearcher,
" waiter, or other officer of the cuſtoms of *Great Britain*, or
" officer of the revenue in *Ireland*, ſhall, for every ſuch of-
" fence, forfeit the ſum of two hundred pounds of lawful
" money of *Great Britain*, to be ſued for and recovered as
" aforeſaid, and ſhall alſo forfeit his office, and be inca-
" pable of holding any office or employment under his Ma-
" jeſty, his heirs or ſucceſſors."

† *Sect.* 11. By 14. Geo. 3. c. 71. ſ. 5. " If any perſon or
" perſons ſhall collect, obtain, or have, in his, her, or their
" cuſtody or poſſeſſion, any ſuch tools or implements as
" aforeſaid, or any tools or implements uſed in the woollen
" or ſilk manufactures of this kingdom, or any parts or
" parcels thereof, and complaint ſhall be made upon the
" oath of one or more credible witneſs or witneſſes, before
" any juſtice or juſtices of the peace, that there is reaſon to
" believe ſuch perſon or perſons have or hath collected,
" obtained, or got into his, her, or their cuſtody or poſ-
" ſeſſion, ſuch tools or implements as aforeſaid, or parts or
" parcels thereof, with intent to export the ſame to ſome
" other port or place than *Great Britain* or *Ireland*; then,
" and in ſuch caſe, it ſhall and may be lawful to and for
" the juſtice or juſtices of the peace unto whom ſuch com-
" plaint ſhall be made, to iſſue his warrant or warrants,
" not only to ſeize all ſuch tools or implements, and parts
" or parcels thereof, but alſo to bring the perſon and per-
" ſons ſo complained of before him or them, or ſome other
" of his Majeſty's juſtices of the peace for the ſame county,
" riding, diviſion, or city; and if, when ſuch perſon or
" perſons ſhall be ſo brought before ſuch juſtice or juſtices,
" he, ſhe, or they, ſhall not give ſuch an account of the uſe
" or purpoſe to which ſuch tools or utenſils, or parts or
" parcels thereof, are intended to be appropriated, as ſhall
" be ſatisfactory to the juſtice or juſtices before whom he,
" ſhe, or they, ſhall be brought as aforeſaid, then, and in
" ſuch caſe, it ſhall and may be lawful to and for ſuch juſ-
" tice or juſtices, not only to cauſe all ſuch tools or uten-
" ſils, or parts or parcels thereof, which ſhall have been
" ſeized as aforeſaid, to be detained, but alſo to bind the
" perſon or perſons ſo charged to appear at the next aſ-

Any perſon collecting ſuch tools, in order to export the ſame, [*Rep. ſo far as relates to woolcards to America, by* 15. Geo. 3. c. 5.]

Juſtices may grant warrants, &c.

" ſizes, general gaol delivery, or quarter-ſeſſions of the " peace for the county, city, riding, or diviſion, where ſuch " offence ſhall be committed, with reaſonable ſureties for " his, her, or their appearance; and in caſe ſuch perſon or " perſons ſhall refuſe or neglect to give ſuch ſecurity, then, " and in ſuch caſe, it ſhall and may be lawful to and for " ſuch juſtice and juſtices to commit the perſon or perſons " ſo refuſing to the county gaol, there to be kept until the " next aſſizes or next quarter-ſeſſions of the county, city, " riding, or diviſion, where ſuch commitment ſhall be, at " the election of ſuch juſtice of the peace, and until he, ſhe, " or they, ſhall be delivered by due courſe of law: and in

and in caſe ſuch perſon be convicted he ſhall loſe all ſuch utenſils, and forfeit 200l.

" caſe any ſuch perſon or perſons ſhall be convicted upon " any indictment or information againſt him, her, or them, " at ſuch aſſize or general gaol delivery, or quarter-ſeſſions " of the peace as aforeſaid, of collecting, obtaining, or get- " ting into his, her, or their cuſtody or poſſeſſion, ſuch tools " or utenſils, or parts or parcels thereof, with ſuch intent " as aforeſaid; then, and in ſuch caſe, the perſon or perſons " ſo offending ſhall, for every ſuch offence, not only forfeit " and loſe all ſuch tools and utenſils, and parts and parcels " thereof, which ſhall be ſo ſeized and detained, but alſo " the ſum of two hundred pounds of lawful money of *Great* " *Britain*, to be recovered by action of debt, bill, plaint, or " information, in any of his Majeſty's courts of record at " *Weſtminſter*, or in the court of ſeſſion in *Scotland*, or in " any of the four courts at *Dublin* reſpectively, wherein no " eſſoin, protection, privilege, wager of law, or more than " one imparlance, ſhall be allowed.

Forfeitures.

† *Sect.* 12. By 14. Geo. 3. c. 71. ſ. 6. " One moiety of " the reſpective forfeitures by this act inflicted upon of- " fenders againſt the ſame, ſhall, when recovered, go and " be applied to the uſe of his Majeſty, his heirs and ſuc- " ceſſors, and the other moiety to the uſe of the perſon or " perſons who ſhall ſue and proſecute for the ſame reſpec- " tively."

Limitations of actions.

† *Sect.* 13. And by 14. Geo. 3. c. 71. ſ. 7. " If any ſuit " or action ſhall be commenced againſt any perſon for what " he ſhall do in purſuance of this act, ſuch action ſhall be " commenced within ſix months after the fact committed; " and the perſon ſo ſued may file common bail, or enter a

General iſſue.

" common appearance, and plead the general iſſue Not " Guilty, and may give this act and the ſpecial matter in " evidence; and if the plaintiff or proſecutor ſhall become " nonſuit, or ſuffer diſcontinuance, or if a verdict paſs " againſt him or her, or if, upon demurrer, judgment be " given againſt the plaintiff, the defendant ſhall recover

Treble coſts.

" treble coſts."

Sect.

† *Sect.* 14. By 21. Geo. 3. c. 37. ſ. 1. it is enacted, "That if, at any time after the twenty-fourth day of *June* 1781, any perſon or perſons in *Great Britain* or *Ireland* ſhall, upon any pretence whatſoever, load, or put on board, or pack, or cauſe or procure to be loaden, put on board, or packed, in order to be loaded or put on board of any ſhip or veſſel, which ſhall not be bound directly to ſome port or place in *Great Britain* or *Ireland*, or ſhall lade, or cauſe or procure to be laden, on board any boat or other veſſel, or ſhall bring, or cauſe to be brought, to any quay, wharf, or other place, in order to be ſo laden or put on board any ſuch ſhip or veſſel, any machine, engine, tool, preſs, paper, utenſil, or implement whatſoever, which now is, or at any time or times hereafter ſhall or may be uſed in, or proper for, the preparing, working, preſſing, finiſhing, or completing, of the woollen, cotton, linen, or ſilk manufactures of this kingdom, or any or either of them, or any other goods wherein wool, cotton, linen, or ſilk, or any or either of them, are or is uſed, or any part or parts of ſuch machine, engine, tool, preſs, paper, utenſil, or implement, by what name or names ſoever the ſame ſhall be called or known; or any model or plan, or models or plans, of any ſuch machine, engine, tool, preſs, paper, utenſil, or implement, or any part or parts thereof; and complaint being made, upon the oath of one or more credible witneſs or witneſſes, before any juſtice or juſtices of the peace, it ſhall and may be lawful to and for ſuch juſtice or juſtices of the peace to iſſue his or their warrant or warrants, not only to ſeize all ſuch machines, engines, tools, preſs, papers, utenſils, or implements, and part or parts thereof, and all ſuch model or plan, models or plans, and part or parts thereof, together with the packages, and all other goods packed therewith, if any ſuch there be, but alſo to bring the perſon or perſons ſo complained of before him or them, or ſome other of his Majeſty's juſtices of the peace for the ſame county, city, riding, diviſion, liberty, ſhire, ſtewartry, or place; and if, when ſuch perſon or perſons ſhall be brought before ſuch juſtice or juſtices, he, ſhe, or they, ſhall not give ſuch an account of the uſe or purpoſe to which ſuch machines, engines, tools, preſs, papers, utenſils, or implements, and part or parts thereof, and all ſuch model or plan, models or plans, and part or parts thereof, are intended to be appropriated, as ſhall be ſatisfactory to the juſtice or juſtices before whom he, ſhe, or they, ſhall be brought as aforeſaid, then, and in ſuch caſe, it ſhall and may be lawful to and for ſuch juſtice or juſtices, not only to cauſe all ſuch machines, engines, tools, preſs, papers, utenſils, or implements, models or plans, or part or parts thereof,

If any perſon ſhall pack or put on board any veſſel any machine, &c. uſed in the woollen, &c. manufactures, or any model of ſuch machine, &c.

any juſtice may grant a warrant for ſeizing ſuch machines, &c.

" thereof, which ſhall have been ſeized as aforeſaid, together " with the packages, and all other goods packed therewith, " to be detained, but alſo to bind the perſon or perſons ſo " charged to appear at the next aſſizes, general gaol delivery, " or quarter-ſeſſions of the peace for the county, city, " riding, diviſion, ſtewartry, or place, where ſuch offence " ſhall be committed, with reaſonable ſureties for his, her, " or their appearance: And in caſe ſuch perſon or perſons " ſhall refuſe or neglect to give ſuch ſecurity, then, and in " ſuch caſe, it ſhall and may be lawful to and for ſuch juſ- " tice or juſtices to commit the perſon or perſons ſo re- " fuſing to the common gaol or houſe of correction, there " to be kept until the next aſſizes, or next quarter-ſeſſions " of the county, city, riding, diviſion, ſhire, ſtewartry, or " place, where ſuch commitment ſhall be, and until he, ſhe, " or they, ſhall be delivered by due courſe of law. And in " caſe any ſuch perſon or perſons ſhall be convicted of any " of the offences aforeſaid, upon any indictment or infor- " mation againſt him, her, or them, at ſuch aſſizes or quar- " ter-ſeſſions of the peace as aforeſaid, the perſon or perſons " ſo offending ſhall, for every ſuch offence, not only forfeit " all ſuch machines, engines, tools, preſs, paper, utenſils, or " implements, models or plans, or part or parts thereof re- " ſpectively, together with the packages, and all other goods " packed therewith, if any ſuch there be, but alſo the ſum " of two hundred pounds of lawful money of *Great Britain*, " and ſhall alſo ſuffer impriſonment in the common gaol, " priſon, or houſe of correction, of the county, city, riding, " diviſion, liberty, ſhire, ſtewartry, or place, wherein ſuch " offender or offenders ſhall be reſpectively convicted, for " the ſpace of twelve months, without bail or mainprize, " and until ſuch forfeiture ſhall be paid."

On neglect of giving ſecurity, the party may be committed.

Penalty on conviction.

† *Sect.* 15. By 24. Geo. 2. c. 37. ſ. 2. " It ſhall and may " be lawful to and for any officer of his Majeſty's cuſtoms " in *Great Britain*, and to and for any officer of the revenue " in *Ireland*, and they are hereby required, to ſeize and ſe- " cure, in ſome or one of his Majeſty's warehouſes, all ſuch " machines, engines, tools, preſs, papers, utenſils, or im- " plements, or part or parts thereof, and all and every ſuch " model or plan, models or plans, or part or parts thereof, " as ſuch officer ſhall find or diſcover to be laid or put on " board, or intended to be laid or put on board, of any ſhip, " veſſel, or boat, which ſhall not be bound directly to ſome " port or place in *Great Britain* or *Ireland*, contrary to the " true intent and meaning of this act, together with the " packages, and all other goods packed therewith, if any " ſuch there be, and they are hereby indemnified in ſo " doing; and all machines, engines, tools, preſs, papers, " utenſils,

Cuſtom-houſe officers empowered to ſeize all ſuch machines, &c. going to be exported.

" utenſils, and implements, or part or parts thereof, model " or plan, models or plans, or part or parts thereof, together " with the packages, and other goods packed therewith, " ſo ſeized and ſecured as aforeſaid, ſhall, after condemna- " tion thereof in due courſe of law, be publicly ſold to the " beſt bidder, by order of the commiſſioners of the cuſtoms " in *Great Britain*, or commiſſioners of the revenue in *Ire-* " *land* reſpectively; and one moiety of the produce ariſing " by the ſale thereof, after deducting the charges of con- " demnation and ſale, ſhall be to the uſe of his Majeſty, " his heirs and ſucceſſors, and the other moiety to the officer " who ſhall ſeize and proſecute the ſame as aforeſaid."

Penalty on captains taking on board any ſuch machine, &c.

† *Sect.* 16. By 21. Geo. 3. c. 37. ſ. 3. " If the captain or " maſter of any ſhip, veſſel, or boat, in *Great Britain* or " *Ireland*, ſhall knowingly or deſignedly permit or ſuffer any " machine, engine, tool, preſs, paper, utenſil, or implement, " or part or parts thereof, or any model or plan, or part or " parts thereof, by this act prohibited to be exported as " aforeſaid, to be put on board his ſaid ſhip, veſſel, or boat, " every ſuch captain or maſter ſhall, for every ſuch offence, " forfeit the ſum of two hundred pounds; and if the ſaid " ſhip, veſſel, or boat, ſhall belong to his Majeſty, his heirs " or ſucceſſors, then the captain or maſter thereof ſhall not " only forfeit the ſum of two hundred pounds, but ſhall alſo " forfeit his employment, and be incapable of holding any " office or employment under his Majeſty, his heirs or ſuc- " ceſſors."

Penalty on cuſtom-houſe officers who ſhall take any entry outward, &c. for exporting any ſuch prohibited machines, &c.

† *Sect.* 17. By 21. Geo. 3. c. 37. ſ. 4. " If any cuſtomer, " comptroller, ſurveyor, ſearcher, waiter, or other officer of " the cuſtoms in *Great Britain*, or any officer of the revenue " in *Ireland*, ſhall take, or knowingly or willingly ſuffer to " be taken, any entry outward, or ſhall ſign any cocket, " warrant, or ſufferance, for the ſhipping or exporting of " any of the ſaid machines, engines, tools, preſs, papers, " utenſils, or implements, or any part or parts thereof, or " any of the ſaid models or plans, or any part or parts " thereof, by this act prohibited to be exported, or ſhall " knowingly or willingly permit or ſuffer the ſame to be " done, directly or indirectly, contrary to the true intent " and meaning of this act, every ſuch cuſtomer, comptroller, " ſurveyor, ſearcher, waiter, or other officer of the cuſtoms " of *Great Britain*, or officer of the revenue of *Ireland*, " ſhall, for every ſuch offence, forfeit the ſum of two hun- " dred pounds, and ſhall alſo forfeit his office, and be inca- " pable of holding any office or employment under his " Majeſty, his heirs or ſucceſſors."

Penalties and Forfeitures.

† *Sect.* 18. By 21. Geo. 3. c. 37. ſ. 5. "The ſeveral penalties and forfeitures herein-before mentioned (the manner of recovery whereof is not herein-before particularly directed) ſhall and may be ſued for and recovered, by action of debt, bill, plaint, or information, in any of his Majeſty's courts of record at *Weſtminſter*, or in the court of ſeſſion in *Scotland*, or in any of the four courts at *Dublin*, in the name of his Majeſty's attorney-general or lord advocate, or in the name of ſome officer or officers of the cuſtoms in *Great Britain*, or ſome officer or officers of the revenue in *Ireland* reſpectively, wherein no eſſoin, protection, privilege, wager of law, or more than one imparlance, ſhall be allowed; and one moiety of the ſaid penalties and forfeitures ſhall go and be applied to the uſe of his Majeſty, his heirs and ſucceſſors, and the other moiety to the uſe of ſuch officer or officers of the cuſtoms or revenue, as ſhall ſue and proſecute for the ſame reſpectively, after deducting the charges of proſecution from the whole."

If oath ſhall be made of any ſuch prohibited machines, &c. being intended to be exported, they may be ſeized, &c.

† *Sect.* 19. By 21. Geo. 3. c. 37. ſ. 6. "If any perſon or perſons hath or have in his, her, or their cuſtody, power, or poſſeſſion, or ſhall collect, obtain, make, apply for, or cauſe or procure to be made, any ſuch machine, engine, tool, preſs, paper, utenſil, or implement, or any part or parts thereof, or any ſuch model or plan, models or plans, or part or parts thereof, as aforeſaid, with intent to export, or that the ſame may be exported to ſome other port or place than *Great Britain* or *Ireland*, and complaint being made, upon the oath of one or more credible witneſs or witneſſes, before any juſtice or juſtices of the peace, that there is reaſon to believe ſuch perſon or perſons hath or have in his, her, or their cuſtody, power, or poſſeſſion, or hath or have collected, obtained, made, applied for, or cauſed or procured to be made, any ſuch machine, engine, tool, preſs, paper, utenſil, or implement, or part or parts thereof, or any ſuch model or plan, or models or plans, or part or parts thereof, as aforeſaid, with intent to export, or that the ſame may be exported, to ſome other port or place than *Great Britain* or *Ireland*; then, and in any of the ſaid caſes, it ſhall and may be lawful to and for the ſaid juſtice or juſtices of the peace to iſſue his or their warrant or warrants to ſeize all ſuch machines, engines, tools, preſs, papers, utenſils, or implements, or part or parts thereof, and all ſuch models or plans, or part or parts thereof, as aforeſaid, and to bring the perſon or perſons ſo complained of before him or them, or ſome other of his Majeſty's juſtices of the peace for the ſame county, city, riding, diviſion, ſhire, ſtewartry, or place; and

" and if ſuch perſon or perſons ſhall not give ſuch an ac-
" count of the uſe or purpoſe to which ſuch mac hines, en-
" gines, tools, preſs, papers, utenſils, or implements, or part
" or parts thereof, models or plans, or part or parts thereof,
" is, are, or were intended to be appropriated, as ſhall be
" ſatisfactory to the juſtice or juſtices before whom he, ſhe,
" or they, ſhall be brought as aforeſaid, then, and in ſuch
" caſe, it ſhall and may be lawful to and for ſuch juſtice or
" juſtices to cauſe all ſuch machines, engines, tools, preſs,
" paper, utenſils, or implements, or part or parts thereof,
" models or plans, or part or parts thereof, which ſhall
" have been ſo ſeized as aforeſaid, to be detained, and alſo
" to bind the perſon or perſons ſo charged to appear at the
" next aſſizes, general gaol-delivery, or quarter-ſeſſions of
" the peace, for the county, city, riding, diviſion, ſhire,
" ſtewartry, or place, where ſuch offence ſhall be committed,
" with reaſonable ſureties for his, her, or their appearance:
" And in caſe ſuch perſon or perſons ſhall refuſe or neglect
" to give ſuch ſecurity, then, and in ſuch caſe, it ſhall and
" may be lawful to and for ſuch juſtice or juſtices to com-
" mit ſuch perſon or perſons to the county gaol, priſon, or
" houſe of correction, there to remain until the next aſſizes
" or quarter-ſeſſions of the county, city, riding, diviſion,
" liberty, ſtewartry, or place, where ſuch commitment ſhall
" be, and until he, ſhe, or they, ſhall be delivered by due
" courſe of law. And in caſe any ſuch perſon or perſons
" ſhall be convicted, upon any indictment or information
" againſt him, her, or them, at ſuch aſſizes or quarter-ſeſ-
" ſions of the peace as aforeſaid, of having in his, her, or
" their cuſtody, power, or poſſeſſion, or of having collected,
" obtained, made, applied for, or cauſed or procured to be
" made, any ſuch machine, engine, tool, preſs, paper, uten-
" ſil, or implement, or part or parts thereof, model or plan,
" or part or parts thereof, with ſuch intent as aforeſaid,
" then, and in ſuch caſe, the perſon or perſons ſo convicted
" ſhall, for every ſuch offence, forfeit and loſe all ſuch ma-
" chines, engines, tools, preſs, papers, utenſils, or imple-
" ments, or part or parts thereof, models or plans, or part
" or parts thereof, which ſhall be ſo ſeized and detained,
" and alſo the ſum of two hundred pounds of lawful money
" of *Great Britain*; and ſhall ſuffer impriſonment in the
" common gaol of the county, city, riding, diviſion, ſhire,
" ſtewartry, or place, wherein ſuch offender or offenders
" reſpectively ſhall be convicted, for the ſpace of twelve
" months, without bail or mainprize, and until ſuch for-
" feiture ſhall be paid: provided nevertheleſs, that no per-
" ſon ſhall be proſecuted for any of the offences aforeſaid
" in this clauſe mentioned, unleſs ſuch proſecution ſhall be
" commenced within the ſpace of twelve months next after
" ſuch offence ſhall be committed."

On neglect of giving ſecurity, the party may be committed.

Penalty on conviction.

Proſecution within twelve months.

Sect.

Forfeitures to informer.

† *Sect.* 20. By 21. Geo. 3. c. 37. ſ. 7. "The reſpective forfeitures by this act inflicted upon offenders againſt the ſame, ſhall, when recovered (where the ſame is not by this act otherwiſe provided), go and be applied to the uſe of the informer, after the expences of the proſecution are paid."

Limitation of actions.

† *Sect.* 21. By 21. Geo. 3. c. 37. ſ. 8. "If any ſuit or action ſhall be commenced againſt any perſon for what he ſhall do in purſuance of this act, ſuch ſuit or action ſhall be commenced within ſix months next after the fact committed, and the perſon ſo ſued may file common bail, or enter a common appearance, and plead the general iſſue Not Guilty, and may give this act and the ſpecial matter in evidence; and if the plaintiff or proſecutor ſhall become nonſuit, or ſuffer diſcontinuance, or if a verdict paſs againſt him or her, or if, upon demurrer, judgment ſhall be given againſt the plaintiff, the defendant ſhall recover treble coſts."

General iſſue.

Treble coſts.

Not to extend to wool cards, &c. exported to America.

† *Sect.* 22. But by 21. Geo. 3. c. 37. ſ. 9. it is provided, "That nothing herein contained ſhall extend to the preventing wool cards, or ſtock cards, not exceeding in value four ſhillings *per* pair, and ſpinners' cards not exceeding in value one ſhilling and ſix-pence *per* pair, uſed in the ſaid woollen manufacture, from being exported to any of his Majeſty's colonies or plantations in *America*."

Penalty on exporting, or attempting to export, any blocks, &c.

† *Sect.* 23. By 22. Geo. 3. c. 60. ſ. 3. it is enacted, "That it ſhall not be lawful for any perſon or perſons whomſoever to export from *Great Britain* to any parts beyond the ſeas, any blocks, plates, engines, tools, or utenſils, commonly uſed in, or which are proper for the preparing, working up, or finiſhing, of the callico, cotton, muſlin, or linen printing manufactures, or any part or parts of ſuch blocks, plates, engines, tools, or utenſils; and if any perſon or perſons ſhall put, or endeavour to put, on board any ſhip, boat, barge, lighter, or other veſſel, not bound directly to ſome port in *Great Britain*, any ſuch blocks, plates, engines, tools, or utenſils, or part or parts thereof, every ſuch perſon ſhall forfeit all ſuch blocks, plates, engines, tools, or utenſils, or part or parts thereof; and alſo ſhall forfeit and pay the ſum of five hundred pounds of lawful money of *Great Britain*, to be recovered by action of debt, bill, plaint, or information, in any of his Majeſty's courts of record at *Weſtminſter*, or in the court of ſeſſion in *Scotland* reſpectively, wherein no eſſoin, protection, or wager of law, nor more than one imparlance, ſhall be allowed."

Sect.

† *Sect.* 24. By 22. Geo. 3. c. 60. ſ. 4. "It ſhall be lawful for any officer or officers of his Majeſty's cuſtoms or exciſe, and they are hereby required and directed, from time to time, to ſeize, and ſecure in ſome of his Majeſty's warehouſes, all ſuch blocks, plates, engines, tools, or utenſils, or part or parts thereof, the exportation whereof is hereby prohibited, as he or they ſhall find, or be informed to be, on board, or in a way of being put on board, any ſhip, boat, barge, lighter, or other veſſel, not bound directly to ſome port in *Great Britain*; and all blocks, plates, engines, tools, or utenſils, or part or parts thereof, ſo ſeized, ſhall, after condemnation thereof in due courſe of law, be publicly ſold to the beſt bidder, to be uſed in *Great Britain*, and not elſewhere; and one moiety of the produce ſhall go to the uſe of his Majeſty, his heirs and ſucceſſors, and the other moiety to the officer or officers who ſhall have ſeized and ſecured the ſame." Officers empowered to ſeize ſuch blocks, &c.

† *Sect.* 25. By 22. Geo. 3. c. 60. ſ. 5. "If the captain, maſter, mate, or other officer, of any ſhip or other veſſel in *Great Britain* or *Ireland*, ſhall willingly or knowingly permit or ſuffer any ſuch blocks, plates, engines, tools, or utenſils, or part or parts thereof, to be put on board his or their ſhip or other veſſel, or ſhall connive at the ſame being done, he or they ſhall, for every ſuch offence, forfeit and pay the ſum of one hundred pounds of lawful money of *Great Britain*, to be recovered as the penalties by this act impoſed on perſons exporting blocks, or other things, as aforeſaid, are directed to be recovered; and if the ſhip or veſſel belongs to his Majeſty, his heirs or ſucceſſors, the captain or other officer or officers thereof, ſo permitting, ſuffering, or conniving, ſhall, beſides forfeiting the ſaid ſum of one hundred pounds, be, and is and are hereby declared to be, incapable of holding any office or commiſſion under his Majeſty, his heirs or ſucceſſors." Penalty on captains, &c. who ſhall permit ſuch blocks, &c. to be put on board.

† *Sect.* 26. By 22. Geo. 3. c. 60. ſ. 6. "If any officer or officers of his Majeſty's cuſtoms ſhall take, or knowingly and willingly permit or allow or ſuffer to be taken, any entry or entries outward, or ſign any cocket or cockets or ſufferance, for the ſhipping or exporting of any of the ſaid blocks, plates, engines, tools, or utenſils, or part or parts thereof, or knowingly ſuffer the ſame to be done, he or they ſhall forfeit and pay the ſum of one hundred pounds of lawful money of *Great Britain*, to be recovered in manner aforeſaid; and ſhall alſo forfeit and loſe his or their office or employment, and be for ever rendered incapable of holding any office or employment under his Majeſty, his heirs or ſucceſſors." Penalty on officers who ſhall take any entry outward for exporting any of the ſaid blocks, &c.

Sect.

Forfeitures.

† *Sect.* 27. By 22. Geo. 3. c. 60. ſ. 7. "One moiety of "the reſpective forfeitures by this act inflicted on offenders "againſt the ſame, ſhall, when recovered, go and be applied "to the uſe of his Majeſty, his heirs and ſucceſſors; and the "other moiety to the uſe of the perſon or perſons who "ſhall ſue and proſecute for the ſame reſpectively."

Limitation of actions.

† *Sect.* 28. And by 22. Geo. 3. c. 60. ſ. 8. "If any ac-"tion or ſuit ſhall be commenced againſt any perſon for "what he ſhall do in purſuance of this act, ſuch action or "ſuit ſhall be commenced within ſix calendar months next "after the fact committed; and the perſon ſo ſued ſhall "and may file common bail, and enter a common ap-
General iſſue. "pearance, and plead the general iſſue Not Guilty, and "may give this act and the ſpecial matter in evidence; and "if the plaintiff or proſecutor ſhall become nonſuit, or "ſuffer diſcontinuance, or if a verdict ſhall paſs againſt him, "or if, upon demurrer, judgment ſhall be given againſt him, "then, and in any of the caſes aforeſaid, the defendant ſhall
Treble coſts. "recover treble coſts."

† *Sect.* 29. By 25. Geo. 3. c. 67. ſ. 1. it is recited, That "the exportation of the ſeveral tools and utenſils made uſe "of in preparing, working up, and finiſhing, the iron and "ſteel manufactures of this kingdom, or either of them, will "enable foreigners to work up ſuch manufactures, and "thereby greatly diminiſh the exportation of the ſame from "this kingdom: therefore, for the preſerving as much as "poſſible to his Majeſty's ſubjects the benefits ariſing from "thoſe great and valuable branches of trade and commerce, "it is enacted, That if, at any time after the firſt day of
No perſon to put on board any veſſel for exportation any tool, &c. in the act ſpecified, "*Auguſt* 1785, any perſon or perſons in *Great Britain* ſhall, "upon any pretence whatſoever, export, load, or put on "board, or pack, or cauſe or procure to be loaden, put on "board, or packed, in order to be loaded or put on board, "of any ſhip or veſſel which ſhall be bound to ſome port "or place in parts beyond the ſeas (except to *Ireland*), or "ſhall lade, or cauſe or procure to be laden, on board any "boat or other veſſel, or ſhall bring, or cauſe to be brought, "to any quay, wharf, or other place, in order to be ſo laden "or put on board any ſuch ſhip or veſſel, any tool or uten-"ſil hereafter mentioned; that is to ſay, hand ſtamps, dog-"head ſtamps, pulley ſtamps, ſtamps of all ſorts, hammers "and anvils for ſtamps, ſcrews for ſtamps, iron rods for "ſtamps, preſſes of all ſorts, in iron, ſteel, or other metal, "which are uſed for giving impreſſions to metal, or any "parts of theſe ſeveral articles; preſſes of all ſorts called "*Cutting-out Preſſes*, beds and punches to be uſed there-"with; piercing preſſes of all ſorts, beds and punches to

"be

" be uſed therewith, either in parts or pieces, or fitted to-
" gether; iron or ſteel dies to be uſed in ſtamps or preſſes,
" either with or without impreſſions on them; rollers of
" caſt iron, wrought iron, or ſteel, for rolling of metal, and
" frames for the ſame; flaſks or caſting-moulds, and boards
" uſed therewith; lathes of all ſorts for turning, burniſhing,
" poliſhing, either the whole together, or ſeparate parts
" thereof; lathe ſtrings, poliſhing bruſhes, ſcoring or ſhad-
" ing engines, preſſes for horn buttons, dies for horn but-
" tons, ſheers for cutting of metal, rolled ſteel, rolled metal
" with ſilver thereon, parts of buttons not fitted up into
" buttons or in an unfiniſhed ſtate; engines for chaſing,
" ſtocks for caſting buckles, buttons, and rings; caſt-iron
" anvils and hammers for forging mills for iron and copper;
" roles, ſlitters, beds, pillars and frames for ſlitting mills;
" die-ſinking tools of all ſorts, engines for making button
" ſhanks, laps of all ſorts, drilling engines, tools for pinch-
" ing of glaſs, engines for covering of whips, poliſhing
" bruſhes, bars of metal covered with gold or ſilver, iron or
" ſteel ſcrew plates, pins, and ſtocks for making ſcrews, or
" any other tool or utenſil whatſoever, which now is, are,
" or at any time or times hereafter ſhall or may be uſed in,
" or proper for the preparing, working, finiſhing, or com-
" pleting, of the iron or ſteel manufactures of this kingdom,
" or either of them, by what name or names ſoever the ſame
" ſhall be called or known, or any model or plan, or models
" or plans, of any ſuch tool, utenſil, or implement, or any
" part or parts thereof; the perſon or perſons ſo offending on penalty of
" ſhall, for every ſuch offence, not only forfeit and loſe all forfeiture
" ſuch tools or utenſils, or parts or parcels thereof, together thereof;
" with the packages, and all other goods packed therewith,
" if any ſuch there be; and complaint being made, upon
" the oath of one or more credible witneſs or witneſſes,
" before any juſtice or juſtices of the peace, it ſhall and
" may be lawful to and for ſuch juſtice or juſtices of the
" peace to iſſue his or their warrant or warrants to bring
" the perſon or perſons ſo complained of before him or
" them, or ſome other of his Majeſty's juſtices of the peace
" for the ſame county, city, riding, diviſion, liberty, ſhire,
" ſtewartry, or place; and if, when ſuch perſon or perſons and if the of-
" ſhall be brought before ſuch juſtice or juſtices, he, ſhe, or fender ſhall
" they, ſhall not give ſuch an account of the uſe or purpoſe not give a ſa-
" to which ſuch tools, utenſils, or implements, and part or tisfactory ac-
" parts thereof, and all ſuch model or plan, models or plans, count before
" and part or parts thereof, are intended to be appropriated, themagiſtrate,
" as ſhall be ſatisfactory to the juſtice or juſtices before he ſhall be
" whom he, ſhe, or they, ſhall be brought as aforeſaid, bound to ap-
" then, and in ſuch caſe, it ſhall and may be lawful to and pear at the
" for ſuch juſtice or juſtices to bind the perſon or perſons next aſſizes,
" ſo &c.

" ſo charged to appear at the next aſſizes, general gaol deli-
" very, or quarter-ſeſſions of the peace for the county, city,
" riding, diviſion, ſtewartry, or place, where ſuch offence
or be committed for trial. " ſhall be committed, with reaſonable ſureties for his, her,
" or their appearance; and in caſe ſuch perſon or perſons
" ſhall refuſe or neglect to give ſuch ſecurity, then, and in
" ſuch caſe, it ſhall and may be lawful to and for ſuch juſ-
" tice or juſtices to commit the perſon or perſons ſo refuſing
" to the common gaol or houſe of correction, there to be
" kept until the next aſſizes, or next quarter-ſeſſions of the
" county, city, riding, diviſion, ſhire, ſtewartry, or place,
" where ſuch commitment ſhall be, and until he, ſhe, or
Penalty on conviction. " they, ſhall be delivered by due courſe of law: And in caſe
" any ſuch perſon or perſons ſhall be convicted of any of
" the offences aforeſaid, upon any indictment or informa-
" tion againſt him, her, or them, at ſuch aſſizes or quarter-
" ſeſſions of the peace as aforeſaid, the perſon or perſons ſo
" offending ſhall, for every ſuch offence, forfeit the ſum of
" two hundred pounds of lawful money of *Great Britain*,
" and ſhall alſo ſuffer impriſonment in the common gaol,
" priſon, or houſe of correction, of the county, city, riding,
" diviſion, liberty, ſhire, ſtewartry, or place, wherein ſuch
" offender or offenders ſhall be reſpectively convicted, for
" the ſpace of twelve months, without bail or main-prize,
" and until ſuch forfeiture ſhall be paid."

† *Sect.* 30. By 25. Geo. 3. c. 67. ſ. 2. " It ſhall and may
Officers of the cuſtoms to ſeize all ſuch tools, &c. laid, or intended to be laid, on board any outward-bound veſſel; " be lawful to and for any officer of his Majeſty's cuſtoms
" in *Great Britain*, and they are hereby required, to ſeize
" and ſecure, in ſome or one of his Majeſty's warehouſes,
" all ſuch tools, utenſils, or implements, or part or parts
" thereof; and all and every ſuch model or plan, models
" or plans, or part or parts thereof, as ſuch officer ſhall find
" or diſcover to be laid or put on board, or intended to be
" laid or put on board, of any ſhip, veſſel, or boat, which
" ſhall be bound to ſome port or place in parts beyond the
" ſeas (except to *Ireland*), contrary to the true intent and
" meaning of this act, together with the packages, and all
" other goods packed therewith (if any ſuch there be), and
" they are hereby indemnified in ſo doing; and all tools,
" utenſils, and implements, or part or parts thereof, model
" or plan, models or plans, or part or parts thereof, toge-
" ther with the packages, and other goods packed therewith,
" ſo ſeized and ſecured as aforeſaid, ſhall, after condem-
Such goods to be ſold. " nation thereof in due courſe of law, be publicly ſold to
" the beſt bidder, by order of the commiſſioners of the
" cuſtoms in *Great Britain* reſpectively; and one moiety
" of the produce ariſing by the ſale thereof, after deducting
" the charges of condemnation and ſale, ſhall be to the uſe
" of

" of his Majeſty, his heirs and ſucceſſors, and the other " moiety to the officer who ſhall ſeize and proſecute for " the ſame as aforeſaid."

† *Sect.* 31. By 25. Geo. 3. c. 67. ſ. 3. " If the captain or " maſter of any ſhip, veſſel, or boat, in *Great Britain*, ſhall " knowingly or deſignedly permit or ſuffer any tool, utenſil, " or implement, or part or parts thereof, or any model or " plan, or part or parts thereof, by this act prohibited to be " exported as aforeſaid, to be put on board his ſaid ſhip, " veſſel, or boat, every ſuch captain or maſter ſhall, for " every ſuch offence, forfeit the ſum of two hundred pounds; " and if the ſaid ſhip, veſſel, or boat, ſhall belong to his " Majeſty, his heirs or ſucceſſors, then the captain or maſ- " ter thereof ſhall not only forfeit the ſum of two hundred " pounds, but ſhall alſo forfeit his employment, and be " incapable of holding any office or employment under his " Majeſty, his heirs or ſucceſſors." Penalty on maſters of veſſels who ſhall permit any ſuch tools, &c. to be put on board.

† *Sect.* 32. By 25. Geo. 3. c. 67. ſ. 4. " If any cuſtomer, " comptroller, ſurveyor, ſearcher, waiter, or other officer " of the cuſtoms in *Great Britain*, ſhall take, or knowingly " or willingly ſuffer to be taken, any entry outward, or " ſhall ſign any cocquet, warrant, or ſufferance, for the " ſhipping or exporting of any of the ſaid tools, utenſils, or " implements, or any part or parts thereof, or any of the " ſaid models or plans, or any part or parts thereof, by this " act prohibited to be exported, or ſhall knowingly or " willingly permit, or ſuffer the ſame to be done, directly " or indirectly, contrary to the true intent and meaning of " this act; every ſuch cuſtomer, comptroller, ſurveyor, " ſearcher, waiter, or other officer of the cuſtoms of *Great* " *Britain*, ſhall, for every ſuch offence, forfeit the ſum of " two hundred pounds, and ſhall alſo forfeit his office, and " be incapable of holding any office or employment under " his Majeſty, his heirs or ſucceſſors." Penalty on officers of cuſtoms taking any entry outwards, &c. for ſuch tools or utenſils.

† *Sect.* 33. By 25. Geo. 3. c. 67. ſ. 5. " If any perſon or " perſons hath or have in his, her, or their cuſtody, power, " or poſſeſſion, or ſhall collect, obtain, make, apply for, or " cauſe or procure to be made, any ſuch tool, utenſil, or " implement, or any part or parts thereof, or any ſuch mo- " del or plan, models or plans, or part or parts thereof, as " aforeſaid, with intent to export, or that the ſame may be " exported out of *Great Britain* to any port or place beyond " the ſeas (except to *Ireland*); and complaint being made, " upon the oath of one or more credible witneſs or witneſſes, " before any juſtice or juſtices of the peace, that there is " reaſon to believe ſuch perſon or perſons hath or have in " his, Any perſon having in poſſeſſion any ſuch tool, utenſil, &c. with intent to export the ſame, any juſtice may iſſue his warrant for ſeizing thereof, and bringing ſuch perſon before him;

" his, her, or their cuſtody, power, or poſſeſſion, or hath
" or have collected, obtained, made, applied for, or cauſed
" or procured to be made, any ſuch tool, utenſil, or imple-
" ment, or part or parts thereof, or any ſuch model or plan,
" or models or plans, or part or parts thereof, as aforeſaid,
" with intent to export, or that the ſame may be exported
" to ſome other port or place than *Great Britain* or *Ireland*;
" then, and in any of the ſaid caſes, it ſhall and may be law-
" ful to and for the ſaid juſtice or juſtices of the peace to
" iſſue his or their warrant or warrants to ſeize all ſuch
" tools, utenſils, or implements, or part or parts thereof,
" and all ſuch models or plans, or part or parts thereof, as
" aforeſaid, and to bring the perſon or perſons ſo com-
" plained of before him or them, or ſome other of his Ma-
" jeſty's juſtices of the peace for the ſame county, city,
" riding, diviſion, ſhire, ſtewartry, or place; and if ſuch
" perſon or perſons ſhall not give ſuch an account of the
" uſe or purpoſe to which ſuch tools, utenſils, or imple-
" ments, or part or parts, models or plans, or part or parts
" thereof, is, are, or were intended to be appropriated, as
" ſhall be ſatisfactory to the juſtice or juſtices before whom
" he, ſhe, or they ſhall be brought as aforeſaid, then, and
" in ſuch caſe, it ſhall and may be lawful to and for ſuch
" juſtice or juſtices to cauſe all ſuch tools, utenſils, or im-
" plements, or part or parts thereof, models or plans, or
" part or parts thereof, which ſhall have been ſo ſeized as
" aforeſaid, to be detained, and alſo to bind the perſon or
" perſons ſo charged to appear at the next aſſizes, general
" gaol delivery, or quarter-ſeſſions of the peace for the
" county, city, riding, diviſion, ſhire, ſtewartry, or place,
" where ſuch offence ſhall be committed, with reaſonable
" ſureties for his, her, or their appearance; and in caſe ſuch
" perſon or perſons ſhall refuſe or neglect to give ſuch ſe-
" curity, then, and in ſuch caſe, it ſhall and may be law-
" ful to and for ſuch juſtice or juſtices to commit ſuch
" perſon or perſons to the county gaol, priſon, or houſe of
" correction, there to remain until the next aſſizes or quar-
" ter-ſeſſions of the county, city, riding, diviſion, liberty,
" ſtewartry, or place, where ſuch commitment ſhall be, and
" until he, ſhe, or they, ſhall be delivered by due courſe of
" law: And in caſe any ſuch perſon or perſons ſhall be con-
" victed, upon any indictment or information againſt him,
" her, or them, at ſuch aſſizes or quarter-ſeſſions of the
" peace as aforeſaid, of having in his, her, or their cuſtody,
" power, or poſſeſſion, or of having collected, obtained,
" made, applied for, or cauſed or procured to be made,
" any ſuch tool, utenſil, or implement, or part or parts
" thereof, model or plan, or part or parts thereof, with ſuch
" intent as aforeſaid, then, and in ſuch caſe, the perſon or
" perſons

and if he ſhall not give a ſatisfactory account thereof, ſuch tools, &c. may be detained, and the poſſeſſor bound over to appear at the next aſſizes, &c.

or may be committed.

Penalty in caſe of conviction.

" perſons ſo convicted ſhall, for every ſuch offence, forfeit " and loſe all ſuch tools, utenſils, or implements, or part or " parts thereof, models, or plans, or part or parts thereof, " which ſhall be ſo ſeized and detained, and alſo the ſum of " two hundred pounds of lawful money of *Great Britain*, " and ſhall ſuffer impriſonment in the common gaol of the " county, city, riding, diviſion, ſhire, ſtewartry, or place, " wherein ſuch offender or offenders reſpectively ſhall be " committed, for the ſpace of twelve months, without bail " or mainprize, and until ſuch forfeiture ſhall be paid."

† *Sect.* 34. By 25. Geo. 3. c. 67. ſ. 7. " Provided always, " that no perſon ſhall be proſecuted for any of the offences " aforeſaid, unleſs ſuch proſecution ſhall be commenced " within the ſpace of twelve calendar months next after " ſuch offence ſhall be committed." Proſecution to be commenced within twelve months.

† *Sect.* 35. By 25. Geo. 3. c. 67. ſ. 8. it is further enacted, " That the ſeveral penalties and forfeitures herein- " before mentioned ſhall and may be ſued for and recovered " by action of debt, bill, plaint, or information, in any of " his majeſty's courts of record at *Weſtminſter*, or in the " court of exchequer, or in the court of ſeſſion, in *Scotland*, " in the name of his majeſty's attorney-general, or lord- " advocate, or in the name of ſome officer or officers of the " cuſtoms in *Great Britain* reſpectively, wherein no eſſoin, " protection, privilege, wager of law, or more than one " imparlance, ſhall be allowed; and that one moiety of " the ſaid penalties and forfeitures ſhall go and be applied " to the uſe of his majeſty, his heirs, and ſucceſſors, and the " other moiety to the uſe of ſuch officer or officers of the " cuſtoms as ſhall ſue and proſecute for the ſame reſpec- " tively, after deducting the charges of proſecution from " the whole." Penalties and forfeitures how to be recovered and applied.

† *Sect.* 36. By 25. Geo. 3. c. 67. ſ. 9. it is further enacted, " That if any ſuit or action ſhall be commenced " againſt any perſon for what he ſhall do in purſuance of " this act, ſuch ſuit or action ſhall be commenced within " three months next after the fact committed; and the " perſon ſo ſued may file common bail, or enter a common " appearance, and plead the general iſſue Not guilty, and " may give this act and the ſpecial matter in evidence; and " if the plaintiff or proſecutor ſhall become nonſuit, or " ſuffer diſcontinuance, or if a verdict paſs againſt him or " her, or if, upon demurrer, judgment ſhall be given againſt " the plaintiff, the defendant ſhall recover treble coſts." Limitation of actions. General iſſue. Treble coſts.

From July 10, 1786, ſuch tools uſed in the iron and ſteel manufactures, &c. may be exported, as might have been before paſſing recited act, except the articles herein ſpecified.

† *Sect.* 37. By 26. Geo. 3. c. 89. it is enacted, "That it ſhall and may be lawful to export from *Great Britain* to the *Britiſh* iſlands in the *Weſt-Indies*, or to any other foreign part or place whatever, any tools or utenſils made uſe of in the iron or ſteel manufactures of this kingdom, which might have been legally exported before the paſſing of the before-recited act (except the ſeveral articles hereinafter particularly enumerated; that is to ſay, rollers either plain, grooved, or of any other form or denomination, of caſt-iron, wrought-iron, or ſteel, for the rolling of iron, or any ſort of metals and frames, beds, pillars, ſcrews, pinions, and each and every implement, tool, or utenſil thereunto belonging; rollers. ſlitters, frames, beds, pillars, and ſcrews for ſlitting mills; preſſes of all ſorts in iron, ſteel, or other metals, which are uſed with a ſcrew exceeding one inch and a half in diameter; or any parts of theſe ſeveral articles, or any model or models of any of the before-mentioned utenſils, implements, and machines, or any part or parts thereof; and all ſorts of utenſils, engines, or machines uſed in the caſting or boring of cannon, or any ſort of artillery, or any parts thereof, or any model or models of tools, utenſils, engines, or machines uſed in caſting or boring of cannon or any ſort of artillery, or any parts thereof; hand-ſtamps, dog-head ſtamps, pulley ſtamps, hammers, and anvils for ſtamps, preſſes of all ſorts, called *cutting-out preſſes*, beds, and punches, to be uſed therewith; piercing preſſes of all ſorts, beds, and punches to be uſed therewith, either in parts or pieces, or fitted together; ſcoring or ſhading engines, preſſes for horn buttons, dies for horn buttons, rolled metal with ſilver thereon, parts of buttons not fitted up into buttons, or in an unfiniſhed ſtate; engines for chaſing, ſtocks for caſting buckles, buttons, and rings; die-ſinking tools of all ſorts, engines for making button-ſhanks, laps of all ſorts, tools for pinching of glaſs, engines for covering of whips, bars of metals covered with gold or ſilver, burniſhing ſtones commonly called *blood ſtones*, either in the rough ſtate or finiſhed for uſe); any thing in the ſaid recited act to the contrary in any-wiſe notwithſtanding."

No perſon to have in poſſeſſion, with intent to export (except to Ireland) any of the articles herein ſpecified.

† *Sect.* 38. By 26. Geo. 3. c. 89. ſ. 2. "It ſhall not be lawful for any perſon or perſons, in the kingdom of *Great Britain*, to export to parts beyond the ſeas (except to *Ireland*), or to have in his or their poſſeſſion, with the intent ſo to export, any of the tools and utenſils herein-

Recited act, ſo far as relates to exporters of articles therein enumerated, to extend to exporters of articles ſpecified in this act.

"after

" after mentioned; that is to ſay, wire moulds for making
" paper; wheels made of metal, ſtone, or wood, for cutting,
" roughing, ſmoothing, poliſhing, and engraving glaſs;
" purcellas, pincers, ſheers, and pipes, uſed in blowing
" glaſs; potters wheels and potters lathes for plain, round,
" and for engine-turning tools, uſed by ſadlers, harneſs-
" makers, and bridle-makers, namely, cantle-ſtrainers, ſide-
" ſtrainers, point-ſtrainers, creaſing-irons, ſcrew-creaſers,
" wheel-irons, ſeat-irons, pricking-irons, bolſtering-irons,
" clams, head-knives; and that the ſaid recited act, ſo far
" as the ſame concerns the exporters or poſſeſſors of the
" tools and utenſils therein enumerated or deſcribed, ſhall
" extend, or be conſtrued to extend, to all and every the
" exporters or poſſeſſors of the tools and utenſils herein
" enumerated or deſcribed, as fully, to all intents and pur-
" poſes, as if the ſame were repeated and re-enacted in the
" body of this act."

† *Sect.* 39. By 26. Geo. 3. c. 89. ſ. 3. it is further enacted, " That this act ſhall continue in force until the " end of the next ſeſſion of parliament, and no longer." Continuance of this act.

CHAPTER THE EIGHTY-NINTH.

EMBEZZLING NAVAL STORES.

† *Sect.* 1. BY 9. and 10. Will. 3. c. 41. IT IS RECITED, "That notwithſtanding divers good laws made and enacted, for the preventing of the ſtealing and embezzlement of his majeſty's ſtores of war, and naval ſtores thoſe frauds, thefts and embezzlements, are frequently practiſed, and the convicting of ſuch offenders is rendered difficult and impracticable, by reaſon it rarely happens that direct proof can be made of ſuch offender's immediate taking, embezzling, or carrying away any of his majeſty's ſaid ſtores of war and naval ſtores out of or from his majeſty's ſtore-houſes, docks, yards, ſhips, ordnance, or other places for keeping and preſerving the ſame, but only that ſuch goods are marked with the king's mark, and found in the cuſtody and poſſeſſion of the ſaid perſon accuſed for ſtealing or embezzling the ſame, to the great encouragement of ſuch wicked offenders, and to his majeſty's and the kingdom's great damage: for preventing ſuch embezzlements for the future, and for the more effectual execution of the laws and ſtatutes already in force againſt ſuch embezzlements and thefts, it is therefore enacted, that from and after the four-and-twentieth day of *June*, one thouſand ſix hundred ninety-eight, it ſhall not be lawful to or for any perſon or perſons whatſoever, other than perſons authorized by contracting with his majeſty's principal officers or commiſſioners of the navy, ordnance, or victualling-office, for his majeſty's uſe, to make any ſtores of war or naval ſtores whatſoever, with the marks uſually uſed to and marked upon his majeſty's ſaid warlike and naval ordnance ſtores; that is to ſay, any cordage of three inches and upwards, wrought with a white thread laid the contrary way, or any ſmaller cordage, to wit, from three inches downwards, with a twine in lieu of a white thread, laid

1. Geo. 1. c. 25. 9. Geo. 1. c. 8.

No warlike or naval ſtores, except for the king's uſe, ſhall be made with the king's marks, &c.

" laid to the contrary way as aforesaid, or any canvas " wrought or unwrought, with a blue streak in the middle, " or any other stores with the broad arrow, by stamp, brand, " or otherwise, upon pain that every such person or persons " who shall make such goods so marked as aforesaid, not " being a contractor with his majesty's principal officers or " commissioners of the navy, ordnance, or victuallers, for " his majesty's use, or employed by such contractor for that " purpose as aforesaid, shall, for every such offence, forfeit " such goods, and the sum of two hundred pounds, toge- Penalty. " ther with costs of suit; one moiety whereof shall be to his " majesty, and the other moiety to the informer, to be reco- " vered by action of debt, bill, plaint, or information, in " any of his majesty's courts of record at *Westminster*, " wherein no essoin, privilege, protection, wager of law, " injunction, or order of restraint, nor more than one " imparlance, shall be allowed."

Penalty on person in whose custody such marked stores are found, &c. 2. Ld. Ray. 1104. ' By 9. Geo. 1. c. 8. sect. 3. and 4. the penalty of this act may be mitigated.'

† *Sect.* 2. By 9. and 10. Will. 3. c. 41. s. 2. it is further enacted, " That such person or persons, in whose custody, " possession, or keeping, such goods or stores marked as " aforesaid shall be found, not being employed as aforesaid, " and such person or persons who shall conceal such goods " or stores marked as aforesaid, being indicted and con- " victed of such concealment, or of the having such goods " found in his custody, possession, or keeping, shall forfeit " such goods, and the sum of two hundred pounds, together " with the costs of prosecution, one moiety to his majesty, " and the other moiety to the informer, to be recovered as " aforesaid, and shall also suffer imprisonment until pay- " ment and performance of the said forfeiture, unless such " person shall, upon his trial, produce a certificate under the " hand of three or more of his majesty's principal officers " or commissioners of the navy, ordnance, or victuallers, " expressing the numbers, quantities, or weights of such " goods as he or she shall then be indicted for, and the " occasion and reason of such goods coming to his or her " hands or possession."

Commissioners of the navy, ordnance, &c. may sell any of the said stores so marked, &c.

† *Sect.* 3. By 9. and 10. Will. 3. c. 41. s. 4. it is further enacted, " That the said principal officers or commissioners " of the navy, ordnance, or victualling-office for the time " being, may sell and dispose of any of the stores aforesaid, " so marked as aforesaid, as they did or might have done " before the making of this act; and that such person or " persons as heretofore have or shall hereafter buy any such " stores, or other stores so marked as aforesaid, of the said " principal officers or commanders, or by their order, may " keep and enjoy the same without incurring the penalty of

" this

" this act, or any law to the contrary whatſoever, upon " producing a certificate or certificates under the hand and " ſeal of three or more of the ſaid principal officers or " commiſſioners of the navy, ordnance, or victualling-" office, that they bought ſuch goods from them the ſaid " principal officers or commiſſioners, or from ſuch perſon " or perſons as did buy the ſaid ſtores from the ſaid prin-" cipal officers or commiſſioners, at any time before ſuch " ſtores were found in their cuſtody; in which certificate " or certificates the quantities of ſuch ſtores ſhall be ex-" preſſed, and the time when and where bought of the ſaid " commiſſioners, who, or any three or more of them, for " the time being, are hereby impowered and directed, from " time to time, to give to ſuch perſon or perſons who ſhall " deſire the ſame, and have bought, and ſhall hereafter buy " any of the aforeſaid ſtores, within thirty days after the " ſale and delivery of the ſaid ſtores ſo ſold, or to be ſold as " aforeſaid."

† *Sect.* 4. By 9. and 10. Will. 3. c. 41. ſ. 5. it is further enacted, " That in caſe any perſon or perſons ſhall be ſued " or proſecuted for or by reaſon of their diſcovering or " ſeizing any ſuch ſtores or goods ſo marked as aforeſaid, " that in every ſuch caſe ſuch perſons ſo ſued or proſecuted " may plead the general iſſue, and give this act and the " ſpecial matter in evidence: and in caſe that upon the " trial of ſuch iſſue the defendants ſo ſued ſhall make proof, " that ſuch goods or ſtores, ſo diſcovered or ſeized by them, " were ſo marked as aforeſaid, and that the plaintiffs or " proſecutors in ſuch ſuit or proſecution ſhall not at ſuch " trial make good proof that they were ſo employed, or had " ſuch certificate as aforeſaid, before ſuch diſcovery and " ſeizure made, and that they did ſhew the ſame unto ſuch " defendants before ſuch ſuit or proſecution commenced or " brought, ſuch defendant ſhall be acquitted, and found not " guilty thereupon; unleſs ſuch defendants, upon ſight of " ſuch certificate, did not deliver back unto ſuch plaintiffs " or proſecutors, at their requeſt or otherwiſe, all ſuch " goods and ſtores ſo ſeized, in as good plight and condition " as they were at the time of ſuch certificate ſhewn; and in " caſe any ſuch defendants ſhall be ſo or otherwiſe acquitted " on ſuch trial, and that ſuch plaintiffs or proſecutors " ſhall diſcontinue ſuch their ſuit or proſecution, or be " nonſuited therein, ſuch defendants ſhall recover treble " coſts." Perſon ſued may plead the general iſſue, &c.

† *Sect.* 5. By 9. and 10. Will. 3. c. 41. ſ. 8. it is further enacted, " That nothing in this act contained ſhall be " con- King's ſtores may be lent to any ſhip in diſtreſs, ſo they be reſtored.

" conſtrued to hinder any the principal officers and com-
" miſſioners of the navy, or any chief commander of any
" of his majeſty's ſhips at ſea, to lend any of his majeſty's
" ſtores to any merchant ſhip or veſſel in diſtreſs or other-
" wiſe, as might lawfully be done before the making of this
" act, in caſe ſuch goods ſo lent be reſtored with all poſſible
" conveniency; and provided ſuch perſon or perſons ſo
" borrowing the ſaid ſtores, from time to time have ſuch
" certificate as aforeſaid, which the ſaid principal officers
" and commiſſioners of the navy, or commander in chief,
" are hereby required to give to the party or parties that
9. Geo. 1. c. 8. " ſhall ſo borrow the ſame." [This made a publick act by
1. Geo. 1. ſeſſ. 2. c. 25. ſect. 14.]

The ſaid officer empowered to enquire of the imbezilment of naval ſtores, and puniſh the offenders.

† *Sect.* 6. By 1. Geo. 1. ſt. 2. c. 25. ſ. 3. it is further enacted, " That the ſaid principal officers and commiſ-
" ſioners of his majeſty's navy, or any one or more of them,
" ſhall have hereby power to enquire, and by warrant under
" his or their hands and ſeals, to empower any perſon or
" perſons to ſearch for the ſame in all places, in like man-
" ner as juſtices of peace may do in caſe of felony, and
" puniſh the offenders by ſuch fine and impriſonment, as
" aforeſaid, the value of the goods ſo imbezilled or filched
" away, not exceeding the ſum of twenty ſhillings, and
" cauſe the goods to be brought in again, and if the offence
" be of ſuch nature as doth require an higher and ſeverer
" puniſhment, then that they, any one or more of them,
" may commit ſuch offender to the next gaol, or to the
" cuſtody of their meſſenger or meſſengers aforeſaid, till he
" or they offending enter into recognizance with ſurety or
" ſureties, according to the nature of the offence, to appear
" and anſwer to the ſame in his majeſty's court of exche-
" quer or other court, where his majeſty ſhall queſtion him
" or them for the ſame, within one year following, or pro-
" ceſs duly ſerved for that purpoſe on ſuch offender or
" offenders."

When the goods imbezilled are under the value of twenty shillings, offender ſhall be fined.

† *Sect.* 7. By 1. Geo. 1. ſt. 2. c. 25. ſ. 4. it is further enacted, " That the treaſurer, comptroller, ſurveyor, clerk
" of the acts, and commiſſioners of the navy, for the time
" being, or any one or more of them, where the goods ſo
" imbezilled, taken, or carried away, ſhall be under the
" value of twenty ſhillings, ſhall have full power and
" authority, upon the oath of one or more witneſſes (which
" they or any of them have hereby power to adminiſter),
" or confeſſion of ſuch party ſo offending, as aforeſaid, or
" other legal proof thereof, to convict the party or parties
" ſo offending, by writing under his or any of their hands
" and ſeals, and to impoſe ſuch fine or fines upon all or
" every

" every ſuch perſon or perſons ſo offending and convicted, " as aforeſaid, as to the ſaid treaſurer, comptroller, ſurveyor, " clerk of the acts, and the commiſſioners of the navy, for " the time being, or any one or more of them, ſhall in his " or their diſcretion ſeem meet; the ſaid fine or fines not " exceeding double the value of the naval goods, proviſions, " victuals, ſtores, or ammunition ſo imbezilled, or carried " away; which fine or fines ſhall be levied by diſtreſs and " ſale of the goods of ſuch offender, by virtue of the warrant " of ſuch officer or officers who ſhall ſo convict the ſaid " offender, directed in manner aforeſaid, to the perſon or " perſons aforeſaid, returning the overplus, if any be, to the " owner of ſuch goods; or in caſe no ſufficient diſtreſs can " be found, as aforeſaid, the party or parties ſo offending " ſhall, by virtue of the warrant of ſuch officer before whom " ſuch perſon or perſons ſhall be convicted, be impriſoned " in the next gaol for any ſpace of time not exceeding three " months, without bail or mainprize."

Fine to be levied by diſtreſs, and for want thereof impriſonment for three months.

† *Sect.* 8. By 1. Geo. 1. ſt. 2. c. 25. ſ. 5. it is further enacted, " That the ſaid treaſurer, comptroller, ſurveyor, " clerk of the acts, and commiſſioners of the navy for the " time being, or any one or more of them, upon oath of " one or more credible witneſſes (which he and they have " hereby power to adminiſter), teſtifying, That his majeſty's " naval goods, ſtores, ammunition, or naval proviſions, or " any part thereof, are conveyed into any ſhip or veſſel " whatſoever, and mentioning the name of ſuch ſhip or " veſſel being at anchor, and not ready to ſail that tide, " within any of the roads, harbours, creeks, or rivers, within " his majeſty's dominions, or any perſon or perſons by " their or one of their warrant or warrants (in which " warrant or warrants the quantity or quality of ſuch goods " ſhall be ſpecified), thereunto authorized and appointed " in the day-time, ſhall have full power and authority to go " on board any ſuch ſhip or veſſel whatſoever, being within " any of the places aforeſaid; and in caſe reſiſtance or re- " fuſal be made upon demand, to enter and break open the " hatches and cabbins, or other places of ſuch ſhip or " veſſel, and ſearch therein for any ſuch naval goods, ſtores, " ammunition, or proviſions belonging to his majeſty's " navy, which have been imbezilled, purloined, and taken " away; and the ſame to ſeize, take, and carry away to any " of his majeſty's yards or ſtorehouſes, to be applied to his " majeſty's uſe, unleſs the ſaid officers and commiſſioners, " upon hearing the matter, ſhall find they were unduly " ſeized, and thereupon reſtore them to the party claiming " the ſame, which they are hereby empowered to do."

Naval ſtores imbezilled and put on ſhipboard ſhall be ſeized by warrant of the ſaid treaſurer, &c.

† *Sect.*

† *Sect.* 9. By 9. Geo. 1. c. 8. ſ. 3. which recites the two ſtatutes above-mentioned, it is enacted, "That if any perſon or perſons ſhall be lawfully convicted of having in "his, her, or their cuſtody, any timber, thick ſtuff, or "plank, marked with the broad arrow, by ſtamp, brand, or "otherwiſe, or of concealing any timber, thick ſtuff, or "plank ſo marked, every ſuch perſon ſo offending ſhall "ſuffer, forfeit, and pay, as for having, keeping, or con-"cealing any other warlike, naval, or ordnance ſtores con-"trary to the ſaid act."

† *Sect.* 10. By 9. Geo. 1. c. 8. ſ. 4. it is further enacted, "That it ſhall and may be lawful to and for any "judge, juſtice or juſtices, before whom any offender or "offenders ſhall be convicted of any of the crimes or "offences before recited, enacted, or mentioned in this act, "to mitigate the penalty for the ſame, as he or they ſhall "ſee cauſe, and to commit the offender or offenders ſo "convicted to the common gaol of the county or place "where the offence ſhall be committed, there to remain "without bail or mainprize until payment be made of the "penalty and forfeiture impoſed by this or the ſaid former "act, or mitigated as aforeſaid, or to puniſh ſuch offender "or offenders corporally, by cauſing him, her, or them to "be publickly whipped, or committed to ſome publick "workhouſe, there to be kept to hard labour for the ſpace "of ſix months, or a leſs time, as to ſuch judge, juſtice, or "juſtices, in his or their diſcretion ſhall ſeem meet; any "thing in the ſaid recited act, or in any other act, to the "contrary notwithſtanding."

† *Sect.* 11. By 9. Geo. 1. c. 8. ſ. 5. it is further enacted, "That where any diſpute ſhall ariſe between the perſons "upon whoſe informations or oaths any perſon or perſons "offending in the premiſes, or againſt the ſaid former act, "ſhall be proſecuted and convicted, touching any right or "title to any of the forfeitures or penalties before-men-"tioned, or any part thereof, the judge, juſtice, or juſtices "before whom ſuch offender or offenders ſhall be convicted, "ſhall examine the matter, and finally determine the "ſame."

Juſtices of aſſize or quarter ſeſſions may try offences relating to the ſtores, &c.

† *Sect.* 12. By 17. Geo. 2. c. 40. ſ. 10. for explaining and amending the ſaid ſtatutes of 9. and 10. Will. 3. c. 41. and 9. Geo. 1. c. 8. it is enacted, "That it ſhall and may be "lawful to and for any judge, juſtice, or juſtices at the "aſſizes, or juſtices of the peace at the general quarter-"ſeſſions to be holden for any county, city, borough, or "town-corporate, to hear, try, and determine, by indict-"ment

" ment or otherwiſe, all or any the crimes or offences men-
" tioned in the ſaid recited acts; and that the ſaid judge,
" juſtice, or juſtices of aſſize, or juſtices of peace as afore-
" ſaid, before whom ſuch offender or offenders ſhall be
" indicted, or tried and convicted of all or any the crimes
" or offences in the ſaid recited acts mentioned, may impoſe
" any fine, not exceeding the ſum of two hundred pounds,
" on ſuch offender or offenders; one moiety to be paid to
" his majeſty, and the other moiety to the informer; and
" may mitigate the ſaid penalty and forfeitures inflicted by
" the ſaid recited acts, or either of them, and to commit
" the offender or offenders ſo convicted and fined to the
" common gaol of the county or place where the offence
" ſhall be committed; there to remain without bail or
" mainprize until payment be made of the penalty and for-
" feitures impoſed by this or the ſaid former acts, or miti-
" gated as aforeſaid; or in lieu thereof, to puniſh ſuch
" offender or offenders in the premiſes corporally, by cauſing
" him, her, or them to be publickly whipped, and com-
" mitted to ſome houſe of correction or publick workhouſe,
" there to be kept to hard labour for the ſpace of three
" months, or leſs time, as to ſuch judge, juſtice, or juſtices
" of aſſize, or juſtices of the peace, ſhall in his or their
" diſcretion ſeem meet; any thing in the ſaid recited acts,
" or in any other act, to the contrary notwithſtanding."

Treaſurer, and other officers of the navy, impowered to act as juſtices in any of the caſes here mentioned.

† *Sect.* 13. By 9. Geo. 3. c. 30. ſ. 5. for the more ſpeedy and effectual bringing to juſtice perſons who ſhall be guilty of ſtealing or embezzling his majeſty's naval ſtores, IT IS ENACTED, " That it ſhall and may be lawful to and for
" the treaſurer, comptroller, ſurveyor, clerk of the acts, or
" any commiſſioner of the navy for the time being, and they
" are hereby reſpectively authorized and impowered, from
" time to time, in all places whatſoever, to do, perform,
" exerciſe, and execute, the office and duty of a juſtice or
" juſtices of the peace, to all intents and purpoſes whatſo-
" ever, in cauſing any perſon or perſons who ſhall, at any
" time or times, be charged with ſtealing or embezzling
" any naval ſtores, the property of his majeſty, his heirs, or
" ſucceſſors, to be apprehended, committed, and proſecuted,
" for the ſame; and all conſtables, headboroughs, keepers
" of gaols and priſons, and all other officers whatſoever,
" ſhall, and they are hereby reſpectively required, from time
" to time, diligently to execute, perform, and obey, all ſuch
" warrant and warrants as ſhall be made, directed, iſſued,
" or given to them, or any of them, by any one or more
" of the perſons aforeſaid, touching any of the matters and
" things hereinbefore contained."

† *Sect.*

Rex *v.* Blackman at *niſi prius*, Hilary Term, 34. Geo. 3.

† *Sect.* 14. It is ſaid, that if a peace-officer, who in ſearching for other goods diſcovers naval ſtores, and an information is filed in purſuance of ſuch diſcovery from him, he is to be deemed the informer within the meaning of the ſtatute 17. Geo. 2. c. 4. ſ. 10.

Rex *v.* Blackman.

† *Sect.* 15. It is ſaid alſo, that although the ſtatute 17 Geo. 2. c. 40. leaves an option in the Judge either to inflict corporal puniſhment or impoſe a fine, the expectation of a ſhare of ſuch fine will render a witneſs incompetent on an information founded on 9. and 10. Will. 3. c. 41.

Rex *v.* Innell and Another, Kent, Lent Aſſizes, 1793, *coram* HOTHAM, *Baron.*

† *Sect.* 16. It is alſo ſaid, that the commiſſioners of the navy cannot grant a warrant of commitment againſt any perſon for having naval ſtores in his cuſtody, contrary to 9. and 10. Will. 3. c. 41. until an indictment has been preferred and found againſt ſuch offender.

Willis's caſe, Hicks's Hall, Oct. Seſſions, 1791.

† *Sect.* 17. It ſeems alſo agreed, that although the indictment ſtate that the priſoner "then or at any time "before, not being a contractor with or authorized by the "principal officers or commiſſioners of our ſaid lord the "king, of the navy, ordnance, or victuallers or victualling-"office, for the uſe of our ſaid lord the king, to make any "ſtores of war, &c." yet that it is not incumbent on the proſecutors to prove this *negative averment*, but that it is incumbent on the defendant to ſhew, if the truth be ſo, that he is within the exception in the ſtatute.

CHAP.

CHAPTER THE NINETIETH.

OF EXERCISING A TRADE WITHOUT HAVING SERVED AS AN APPRENTICE.

† *Sect.* 1. BY 5. Eliz. c. 4. ſ. 31. it is enacted, "That "it ſhall not be lawful to any perſon or "perſons, other than ſuch as now do lawfully uſe or exer- "ciſe any art, myſtery, or manual occupation, to ſet up, "occupy, uſe, or exerciſe any craft, myſtery, or occupation, "now uſed or occupied within the realm of *England* or "*Wales*; except he ſhall have been brought up therein "ſeven years at the leaſt as an apprentice, in manner and "form aboveſaid; nor to ſet any perſon on work in ſuch "myſtery, art, or occupation, being not a workman at this "day; except he ſhall have been apprentice as is aforeſaid: "or elſe having ſerved as an apprentice as is aforeſaid, ſhall "or will become a journeyman, or be hired by the year; "upon pain that every perſon willingly offending, or "doing the contrary, ſhall forfeit and loſe for every default "forty ſhillings for every month."

None may uſe any manual occupation, except he hath been apprentice to the ſame, &c. 31. Eliz. c. 5. 22. Geo. 2. c. 44. 3. Bulſtr 179. 1. Roll. 10. 2. Roll 391. Stiles 223. 383. Diſtillers exempted by 12. Annæ, ſtat. 2. c. 3. ſ. 1. 1. Lutw. 164. 1. Lev. 87.

2. Lev. 206. 8. Co. 129. 11. Co. 54. Cro. El. 737. Cro. Jac. 85. 178. 538. Cro. Car. 316. 347. 499. 516. Hob. 211. 183. Noy 5. 1. Vent. 8. 51. 142. 174. 326. 346. 364. 3. Keb. 816. 843. 1. Mod. 26. 2. Mod. 256. 3. Mod. 313. 2. Ld. Ray. 1188. 1248. See 1. Burr. 5. 251. 389. 2. Burr. 1036. 4. Burr. 2449. 2. Wilſ. 40.

† *Sect.* 2. By 15. Car. 2. c. 15. "Hemp-workers of all "kinds, net-makers, and makers of tapeſtry-hangings, are "excepted; who may ſet up without having ſerved ſeven "years."

† *Sect.* 3. By 3. Geo. 3. c. 8. "All officers, mariners, "and ſoldiers, who have been employed in his majeſty's "ſervice, and not deſerted, may exerciſe ſuch trades as "they are apt for, in any town or place."

† *Sect.*

† *Sect.* 4. By 17. Geo. 3. c. 33. "With reſpect to the "counties of *Middleſex*, *Eſſex*, *Surrey*, and *Kent*, for want of "a ſufficient number of perſons who have ſerved apprenticeſhips to the trade of a *dyer*, it ſhall be lawful for any "perſon exerciſing that trade within any of the ſaid "counties, to employ ſuch number of journeymen, ſervants, and labourers, as he ſhall have occaſion for, without incurring any penalty."

Farren *qui tam* v. Williams, Cowp. 369.

† *Sect.* 5. It is decided, that an information *qui tam* may be brought at the quarter-ſeſſions upon this ſtatute.

Ball *qui tam* v. Cobus, 1. Burr. 367.

† *Sect.* 6. It is alſo decided, that although the ſtatute mentions only "city, market-town, or corporation," yet an information *qui tam* for exerciſing a trade at *the pariſh* of *A.* in ſuch a county, &c. is good.

Bull. N. P. 192.

Rex v. Furnith, 1. Mod. 26.

† *Sect.* 7. It alſo ſeems, that the above ſtatutes reſtrain perſons from carrying on trades in country *villages* unleſs they have ſerved as apprentices to ſuch trade; but it is ſaid to be the practice to find for the defendant, if it appear that the trade was carried on in a ſmall village.

8. Co. 129. 2. Salk. 611.

(*a*) Hard. 54. Stiles 223. (*b*) Cro. Car. 316. (*c*) 2. Keb. 403.

† *Sect.* 8. It ſeems alſo agreed, that it reſtrains unqualified perſons from uſing any trade carried on at the time of paſſing, or which is mentioned in the third ſection of the ſtatute; as the trade of a draper (*a*), an ironmonger (*b*), ſoap-maker (*c*), cutler (*d*), brewer (*e*), baker (*f*), taylor (*g*), upholſterer (*h*), point-maker (*i*), ſpurrier (*k*), tyler (*l*), fellmonger (*m*), tanner (*n*), barber (*o*), cook (*p*).

(*d*) Palm. 543. (*e*) Cro. Jac. 178. (*f*) 2. Roll. 376. (*g*) 1. Lev. 243. (*h*) 2. Salk. 611. (*i*) Cro. Car. 516. (*k*) Cro. Jac. 179. (*l*) 4. Mod. 145. (*m*) 2. Salk. 611. (*n*) 2. Burr. 1035. (*o*) 1. Lev. 87. (*p*) 8. Co. 129.

(*q*) 1. Saund. 311. (*r*) Hutton 132. (*s*) Show. 266. (*t*) Noy 5. Carth. 163.

† *Sect.* 9. It ſeems alſo, that a perſon having the freedom of a city does not releaſe him from the reſtraint of this ſtatute (*q*); nor his being an alien or denizen (*r*), or having ſerved as an apprentice to another trade (*s*), or even to the widow of a qualified trader, unleſs ſhe aſſiſted her huſband ſeven years (*t*).

Hobbs v. Young, 2. Salk. 610.

† *Sect.* 10. It is alſo decided, that an unqualified maſter cannot carry on a trade by means of qualified journeymen; for the intent of the ſtatute is to annex the benefit of trade to ſuch as have undergone the hardſhip of learning it, and few would take the trouble of being apprentices if they might employ others to work for them.

† *Sect.*

† *Sect.* 11. But it is ſaid that this ſtatute does not extend to trades where no ſkill is required. 2 Bulſt. 190. Salk. 611. 1. Vent. 326. 2. Lev. 230. Cro. Car. 499.

† *Sect.* 12. It is alſo decided, that a perſon who works at a trade as *a journeyman* is not liable to the penalties of this ſtatute, although he is not qualified to ſet up in it. Beach *v.* Turner, 4. Burr. 2449.

† *Sect.* 13. It is certain alſo that a man may brew, bake, or uſe any other lawful trade or manual occupation for the uſe of himſelf or his family, and may employ ſervants ſkilful therein, but he cannot ſell for lucre or gain, or retain an apprentice therein. 8. Co. 129.

† *Sect.* 14. It is alſo decided, that a qualified maſter may take a partner who has not ſerved as an apprentice to the trade, provided the partner only ſhare in the profits thereof, and do not actually exerciſe the trade himſelf. Reynard *v.* Chace, 1. Burr. 2.

† *Sect.* 15. It is alſo decided, that if a perſon has exerciſed and followed any trade as a maſter, or hath followed two or more different trades without interruption or impediment for the term of ſeven years, he is not liable to be proſecuted on this ſtatute. 2. Wilſ. 168. Bl. Rep. 233.

† *Sect.* 16. It hath alſo been decided, that ſerving as an apprentice at any place, whether in *England*, in *Wales*, or any other place, is ſufficient. 1. Salk. 67.

CHAR-

CHAPTER THE NINETY-FIRST.

Of DOG STEALING.

† *Sect.* 1. BY 10. Geo. 3. c. 18. ſ. 1. it is enacted, "That "if any perſon ſhall ſteal any dog or dogs, "of any kind or ſort whatſoever, from the owner or owners "thereof, or from any perſon or perſons intruſted by the "owner or owners thereof with ſuch dog or dogs; or ſhall "ſell, buy, receive, harbour, detain, or keep any dog or "dogs of any kind or ſort whatſoever, knowing the ſame "to have been ſtolen as aforeſaid, every ſuch perſon, upon "being convicted thereof upon the oath of one or more "credible witneſs or witneſſes, or by his or her own con- "feſſion, before any two or more juſtices of the peace for "any county, riding, diviſion, or place, ſhall, for the firſt "offence, forfeit and pay ſuch ſum of money, not exceed- "ing thirty pounds, nor leſs than twenty pounds, as to ſuch "juſtices ſhall ſeem meet, together with the charges previous "to, and attending ſuch conviction, to be aſcertained by "ſuch juſtice before whom ſuch offender ſhall be convicted: "and in caſe ſuch penalty ſhall not be forthwith paid, ſuch "juſtices ſhall commit the offender to the common gaol or "houſe of correction, there to remain without bail or "mainprize for any time not exceeding twelve calendar "months, nor leſs than ſix calendar months, or until the "penalty and charges ſhall be paid: and if any perſon, "having been convicted as aforeſaid, ſhall afterwards be "guilty of the like offence, and ſhall be thereof convicted "in like manner as aforeſaid, every ſuch perſon ſhall, for "every ſuch offence, forfeit and pay ſuch ſum of money, "not exceeding fifty pounds, nor leſs than thirty pounds, "as to ſuch juſtices ſhall ſeem meet, together with the "charges previous to, and attending ſuch conviction, to be "aſcertained by ſuch juſtices before whom ſuch offender "or offenders ſhall be ſo convicted: which ſaid penalties, "or any of them, when recovered, ſhall be paid, one "moiety thereof to the informer, and the other moiety "to the poor of the pariſh where the offence ſhall be com- "mitted; and, upon nonpayment thereof, ſuch juſtices "ſhall commit the offender to the common gaol or houſe "of

First offence to forfeit not leſs than twenty pounds, &c.

Subſequent offence to forfeit not leſs than thirty pounds, &c.

" of correction, there to remain without bail or mainprize " for any time not exceeding eighteen months, nor leſs " than twelve months, or until the penalty and charges " ſhall be paid; and ſuch juſtices ſhall alſo order the ſaid " offender to be publickly whipped, within three days after " ſuch commitment, in the town wherein ſuch gaol or " houſe of correction ſhall be, between the hours of twelve " and one of the clock."

Juſtices to grant warrants, &c.

† *Sect.* 2. By 10. Geo. 3. c. 18. ſ. 2. it is further enacted, " That it ſhall and may be lawful to and for any one or " more of his majeſty's juſtices of the peace in and for any " county, riding, diviſion, or place, upon information to " him or them made for that purpoſe, to grant a warrant or " warrants to ſearch for any dog or dogs ſtolen as aforeſaid, " and in caſe any ſuch dog or dogs, or the ſkin or ſkins of " ſuch dog or dogs, ſhall upon ſuch ſearch be found, to " take and reſtore every ſuch dog or dogs, or ſuch ſkin or " ſkins, to the owner thereof; and the perſon or perſons in " whoſe cuſtody or poſſeſſion any ſuch dog or dogs, ſkin or " ſkins, ſhall be ſo found (in caſe it ſhall appear that ſuch " perſon was privy to ſuch dog or dogs having been ſtolen " as aforeſaid, or that ſuch ſkin or ſkins was the ſkin or " ſkins of any dog or dogs ſtolen as aforeſaid), ſhall re- " ſpectively be ſubject and liable to the like penalties and " puniſhments as perſons convicted of ſtealing any dog or " dogs are hereinbefore made ſubject and liable to."

Juſtices may cauſe to be drawn up the following

† *Sect.* 3. By 10. Geo. 3. c. 18. ſ. 3. it is further enacted, " That all juſtices of the peace, before whom any " perſon or perſons ſhall be convicted of any offence againſt " this act, ſhall and may cauſe the conviction to be drawn " up in the following form of words, or in any other form " of words to the ſame effect, as the caſe ſhall happen; " *viz.*

Form of conviction.

' BE it remembered, That on the day of ' , in the year of Our Lord ' *A. B.* is convicted before us of his majeſty's ' juſtices of the peace for the county of ' *(ſpecifying the offence, and the time and place when and where* ' *the ſame was committed, as the caſe ſhall be).*

' Given under our hands and ſeals, the day and ' year aforeſaid.'

Appeal.

† *Sect.* 4. By 10. Geo. 3. c. 18. ſ. 3. it is further enacted, " That if any perſon ſhall think himſelf or herſelf aggrieved " by any thing done in purſuance of this act, ſuch perſon " may appeal to the juſtices of the peace at the next general " quarter-

" quarter-ſeſſion of the peace, to be held for the county or " place wherein the cauſe of complaint ſhall ariſe, and " within four days after the cauſe of ſuch complaint ſhall " have ariſen; ſuch appellant giving, or cauſing to be " given, fourteen days notice at leaſt, in writing, of his or " her intention to bring ſuch appeal, and of the matter " thereof, to the perſons whoſe acts are complained againſt; " and, within two days after ſuch notice, entering into a " recognizance before ſome juſtice of the peace for ſuch " county or place, with two ſufficient ſureties, conditioned " to try ſuch appeal, and abide the order of, and to pay ſuch " coſts as ſhall be awarded by, the juſtices at ſuch quarter- " ſeſſion: and the ſaid juſtices at ſuch ſeſſion, upon due " proof of ſuch notice being given as aforeſaid, and of the " entering into ſuch recognizance, ſhall hear and finally " determine the cauſes and matters of ſuch appeal in a " ſummary way, and award ſuch coſts to the parties appeal- " ing, or appealed againſt, as they the ſaid juſtices ſhall " think proper; and the determination of ſuch quarter- " ſeſſions ſhall be final, binding, and concluſive, to all " intents and purpoſes; and no order made concerning " any of the matters aforeſaid, or any other proceedings " to be had, touching the conviction or convictions of any " offender againſt this act, ſhall be quaſhed for want of " form, or be removed by *certiorari* or any other writ or " proceſs whatſoever, into any of his majeſty's courts of " record at *Weſtminſter*."

† *Sect.* 5. It is ſaid, that in an information on this ſtatute it is indiſpenſably neceſſary to deſcribe the particular kind of dog which is alledged to have been ſtolen. Add. P. S. 221.

† *Sect.* 6. It is alſo doubted whether, from the inaccurate manner in which this ſtatute is worded, it would be penal to ſteal a bitch. Burn's Juſtice.

CHAPTER THE NINETY-SECOND.

OF GAMING.

GAMING is permitted in *England* upon every poſſible ſubject, except where it is accompanied with circumſtances repugnant to *morality* or *public policy*; or where, as in certain ſpecial caſes, it is reſtrained by poſitive ſtatutes. Dalton c. 46. Cowper 37. 730. 4. Comm. 169. 2. Vernon 71. 2. Ventris 175. 2. Bac. Abr. 619.

I ſhall therefore endeavour to ſhew how far gaming is permitted or condemned by the common law, and in what caſes it is reſtrained by ſtatute, under the following heads:

1. Wagers or bets.
2. Keeping a common gaming-houſe.
3. Exceſſive gaming.
4. Horſe-races.
5. Pretended lotteries.
6. Foreign lotteries.
7. Inſurances.
8. Stockjobbing.

And firſt as to WAGERS OR BETS.

† *Sect.* 1. A wager or bet is a contract entered into, without colour or fraud, between two or more perſons, for a good conſideration, and upon mutual promiſes to pay a ſtipulated ſum of money, or to deliver ſome other thing, to each other, according as ſome prefixed and equally uncertain contingency ſhall happen within the terms upon which the contract is made. 2. Ventris 175. Ld. Ray. 1035. 6. Mod. 129. Cowper 38.

And upon this ſpecies of gaming the following points appear to have been reſolved:

Andrews *v.* Herne, 1. Lev. 33.

† *Sect.* 2. That a promiſe, in conſideration of twenty ſhillings, to repay twenty pounds *ſi Carolus Stuartus foret rex Angliæ infra duodecim menſes tunc prox' ſequent'* is good, notwithſtanding *Charles Stuart* was in fact *king of England* at the very time, and therefore no contingency which could happen within the terms of the contract; for the Court held that the contract ſhould be conſtrued according to the circumſtances; and as the king was then *out of poſſeſſion*, they determined the real contingency to be, "if *Charles Stuart* ſhould be king of *England in poſſeſſion* within the twelve months."

See Grumbals *v.* Aucher, 1. Sid. 314.

Vide the Caſe of Jones *v.* Da Coſta, Cowper 729 to 736.

† *Sect.* 3. That wagers which tend to violate the peace of ſociety, by exhibiting a third perſon, who is innocent, in a ridiculous and contemptible light to all the world, and to break in upon his private comfort and peace of mind, are illegal and void; as where two indifferent perſons bet upon the ſex of a third perſon; or that ſuch a woman has committed adultery; or that an unmarried woman has had a baſtard; or that a certain character is an *hermaphrodite*; or that he has any diſgraceful diſeaſe upon him; or that a woman has a mark or defect upon ſome concealed part of her body; in all ſuch caſes the law will not permit the peace ſociety to be diſturbed, or the feelings of the individual to be injured, by the voluntary tranſactions of other perſons; and the party likely to be injured or expoſed by them, or whoſe intereſt ſuch wagers affect, may apply to the court of king's bench to put a ſtop to proceedings ſo diſgraceful and improper.

Cowper 39.

† *Sect.* 4. That wagers alſo which conduce to the commiſſion of any criminal act are illegal and void; as where a wager is laid that one man ſhall beat another; for it is an incitement to a *breach of the peace*.

Cowp. 39.

† *Sect.* 5. That all wagers which are an incitement to *immorality*, or which are made upon a ſubject *contra bonos mores*, are void, for the law of *England* prohibits every thing which is made *contra bonos mores*; as for inſtance, the violation of female chaſtity, where a man lays a wager that he will ſeduce ſuch a woman; or where, as in Sir *Charles Sedley's* caſe, the wager tends to provoke a man to expoſe himſelf naked in a public balcony.

† *Sect.* 6. And although the indecency of evidence is no objection to the admiſſibility of it, provided it be relevant and

and neceſſary to the cauſe in which it is introduced; yet it has been ſaid by very high authority (*a*), that if a wager be laid of ſuch a nature as to require a medium of proof which muſt unavoidably be indecent, the neceſſity of ſuch indecent evidence would be a material ground for declaring the wager illegal and *contra bonos mores*:—as ſuppoſe two perſons were to lay a wager upon a mark or defect in a woman's body; the Court would hardly ſuffer her chambermaid to be called to give evidence upon ſuch a queſtion. So where a wager is made upon the ſex of a perſon, who, to the appearance of all the world, is a man (*b*), but who, for reaſons of his own, thinks proper to keep his ſex a ſecret; the medium of proof upon ſuch a queſtion muſt ariſe from the circumſtances that diſtinguiſh the ſexes; and neceſſarily tends to introduce all the indecent evidence ſuch an enquiry can involve.

(*a*) Ld. Manſfield, Cowper 736.

(*b*) This was a policy upon the ſex of the Chevalier D'Eon.

† *Sect.* 7. But many contracts which are not againſt the principles of *morality*, or *public decency* are ſtill void, as againſt the maxims of *ſound policy* (*c*); and therefore all wagers which in their nature tend to encourage evil and corrupt practices, repugnant to the principles of juſtice and equity, and detrimental to the public good, are illegal and void (*d*); as if a wager were laid with a judge upon the event of a cauſe depending before him; or even with one of the lords upon the event of an appeal, on which the houſe is to decide; for it is not only highly eſſential that the courſe of juſtice ſhould flow from ſources in reality clear and unpolluted, but that the publick mind ſhould be as free from ſuſpicion as the ſtream itſelf ſhould be from the appearance of taint or corruption (*e*); and in this ſpirit it is ſaid (*f*), that a wager with either the attorney or the counſel upon the event of a ſuit in which they are concerned, would, on that account, be liable to object or

(*c*) Ld. Manſfield, Cowper 39.

(*d*) 1. Term Rep. 60.

(*e*) 1. Term Rep. 60.

(*f*) Ld. Manſfield, Cowper 40.

† *Sect.* 8. So alſo a wager colourably made as a cover to conceal uſury, or any other illegal practice, is void; and the moment the truth of the tranſaction appears, it would remain to be governed by principles, as if the parties had really and openly entered into ſuch a corrupt agreement. Thus alſo in evaſions of ſimony, where a perſon who wanted to be made a biſhop, converſing with the perſon who had moſt intereſt at court upon the ſubject of a ſee that was then vacant, ſaid, "I will bet you ſo much," naming a conſiderable ſum, "that I have not the biſhop-"rick;" this was a mere colour to diſguiſe what was the real intention of the party, for the real intention was to purchaſe it; and the contract being clearly and manifeſtly corrupt, it was therefore void.

Cowper 39.

Allen *v.* Herne, Durnford and East's Reports, p. 56. Mich. Term, 26. Geo. 3.

† *Sect.* 9. And upon the principle of corruption, it has been determined, that a wager between oppoſite voters at an election for members of parliament, made before the poll began, upon the event of the election, is a void contract; becauſe in the eye of the law it is corrupt, and againſt the fundamental principles of the conſtitution. It is a pecuniary influence upon the exerciſe of a franchiſe, which, from its nature and uſe, ſhould be free and unbiaſſed to the laſt moment of its exiſtence.

(*a*) Jones, aſſignee of Knight, *v.* Parry.

(*b*) *Per* Buller *J.* in the Caſe of Allen *v.* Herne *ut ſupra.*

† *Sect.* 10. And in a wager upon the event of an election for *Briſtol* (*a*), LORD MANSFIELD, immediately upon opening the caſe, nonſuited the aſſignee of the winner, who was the plaintiff, upon the ground that it was a colour for bribery and corruption, although it did not appear whether the parties were voters or not. And it is clear (*b*), that a wager between a voter and another perſon who is not one, is a palpable bribe; it is a ſum of money laid to procure a particular vote.

Foſter *v.* Thackary, King's Bench, Trin Term, 21. Geo. 3.

† *Sect.* 11. But it does not ſeem to be ſettled how far a wager "that war would be declared againſt *France* within "three months" is or is not illegal. A policy of inſurance was opened upon this event, and the opinion of the twelve judges was taken upon the point, whether the wager was void under the 14. Geo. 3. c. 47.; the courts of king's bench and common pleas were of opinion that it was void by the ſtatute; the court of exchequer was of a contrary opinion; and no judgment was ever given on the caſe.

Jones *v.* Randall and another, Eaſter Term, 14. Geo. 3. Cowper 37.

† *Sect.* 12. It is however determined, that a wager fairly laid, without fraud or colour, between parties litigating in equity upon the event "Whether a decree of the court of "chancery would be reverſed on appeal to the houſe of "lords," is legal? The contract is equal between the parties; for whether the houſe of lords would be of the ſame or a different opinion with the chancellor, is a future event equally uncertain, and of which each of them have equal knowledge or equal ignorance. It is neither immoral nor contrary to the dictates of juſtice, or the principles of ſound policy, or the decencies of public manners. And under theſe circumſtances, when a nice queſtion is depending, on which even perſons in the profeſſion may differ, either they or any two other perſons may lawfully bet about the deciſion (*c*).

(*c*) *Per* Lord Mansfield.

The Caſe of Lord March *v.* Pigot, 5. Burrow 2802.

† *Sect.* 13. So alſo a fair wager laid at *Newmarket*, without either warranty or exception, by two young heirs upon the

the lives of their reſpective fathers, has been adjudged good, notwithſtanding one of their fathers was actually dead at the time the bet was laid; for that event could not have been known to the parties; and the material contingency was, which of them ſhould firſt inherit the patrimony. Nor is this wager ſuch as injures or affects the individuals who are made the ſubject of it (*a*); the reproach, if any, falls upon the parties themſelves who made it.

(*a*) Cowper 733. 736.

As to THE SECOND POINT, *viz.* The offence of keeping and frequenting a common gaming-houſe.

The penalty for maintenance of a houſe for unlawful games.

† *Sect.* 14. By 33. Hen. 8. c. 9. ſ. 11. it is enacted, "That no manner of perſon or perſons, of what degree, "quality, or condition ſoever he or they be, from the Feaſt "of the Nativity of St. *John Baptiſt* now next coming, by "himſelf, factor, deputy, ſervant, or other perſon, ſhall "for his or their gain, lucre, or living, keep, have, hold, "occupy, exerciſe, or maintain, any common houſe, alley, "or place of bowling, coyting, cloyſh-cayls, half-bowl, "tennis, dicing-table, or carding, or any other manner "of game prohibited by any eſtatute heretofore made, "or any unlawful new game now invented or made, or "any other new unlawful game hereafter to be invented, "found, had, or made, upon pain to forfeit and pay for "every day keeping, having, or maintaining, or ſuffer-"ing any ſuch game to be had, kept, executed, played, or "maintained within any ſuch houſe, garden, alley, or "other place, contrary to the form and effect of this eſta-"tute, forty ſhillings."

The penalty for reſorting to a houſe of unlawful games.

† *Sect.* 15. By 33. Hen. 8. c. 9. ſ. 12. "And alſo every "perſon uſing and haunting any of the ſaid houſes and "plays, and there playing, to forfeit for every time ſo do-"ing, ſix ſhillings eight-pence."

Magiſtrates may repreſs unlawful games, and puniſh offenders.

† *Sect.* 16. By 33. Hen. 8. c. 9. ſ. 14. it is further enacted, "That it ſhall be lawful to all and every the juſ-"tices of peace in every ſhire, mayors, ſheriffs, bailiffs, "and other head officers within every city, town, and bo-"rough within this realm, from time to time, as well with-"in liberties as without, as need and caſe ſhall require, to "come, enter, and reſort into, all and every houſes, places, "and alleys where ſuch games ſhall be ſuſpected to be "holden, exerciſed, uſed, or occupied, contrary to the "form of this eſtatute: and as well the keepers of the "ſame, as alſo the perſons there haunting, reſorting, "and playing, to take, arreſt, and impriſon, and them "ſo taken and arreſted to keep in priſon unto ſuch "time

Farther proviſions relating hereto, 2. Geo. 2. c. 28. ſ. 9.

" time as the keepers and maintainers of the ſaid plays " and games have found ſureties to the king's uſe, to be " bound by recognizance or otherwiſe, no longer to uſe, " keep, or occupy any ſuch houſe, play, game, alley, or " place; and alſo that the perſons there ſo found, be in " like caſe bound by themſelves, or elſe with ſureties, by " the diſcretions of the juſtices, mayors, ſheriffs, bailiffs, " or other head officers, no more to play, haunt, or exer- " ciſe from thenceforth, in, at, or to any of the ſaid places, " or at any of the ſaid games."

Searching of houſes where unlawful games be kept.

† *Sect.* 17. By 33. Hen. 8. c. 9. ſ. 15. it is further enacted, " That the mayors, ſheriffs, bailiffs, conſtables, " and other head officers within every city, borough, and " town within this realm, where any ſuch officers ſhall for- " tune to be, as well within the franchiſes as without, " ſhall make due ſearch weekly, or at the fartheſt at all " times hereafter once every month, in all places where " any ſuch houſes, alleys, plays, or places ſhall be ſuſpected " to be had, kept, and maintained; and if the ſaid mayors, " ſheriffs, bailiffs, conſtables, and other head officers with- " in their cities, boroughs, and towns, as well within fran- " chiſes as without, do not make due ſearch at the fartheſt " once every month, if the caſe ſo require, according to " the tenor of this act, and do not execute the ſame in all " things according to the purport and force of the ſame; " that then every ſuch mayor, ſheriff, bailiff, conſtable, " or other head officer, to pay and forfeit for every month " not making ſuch ſearch, nor executing the ſame, forty " ſhillings."

Perſons prohibited to play at unlawful games out of *Chriſtmas*. 1. Lutw. 133.

† *Sect.* 18. By 33. Hen. 8. c. 9. ſ. 16. it is enacted, " That no manner of artificer or craftſman of any handi- " craft or occupation, huſbandman, apprentice, labourer, " ſervant at huſbandry, journeyman, or ſervant of arti- " ficer, mariners, fiſhermen, watermen, or any ſerving " man, ſhall from the ſaid Feaſt of the Nativity of St. *John* " *Baptiſt*, play at the tables, tennis, dice, cards, bowls, " claſh, coyting, logating, or any other unlawful game, " out of *Chriſtmas*, under the pain of twenty ſhillings to " be forfeit for every time; and in *Chriſtmas* to play at " any of the ſaid games in their maſters houſes, or in their

Playing at bowls. Certain officers may commit offenders to priſon.

" maſters preſence; and alſo that no manner of perſons " ſhall at any time play at any bowl or bowls in open places " out of his garden or orchard, upon the pain for every " time ſo offending to forfeit ſix ſhillings eight-pence; " and that all juſtices of peace, mayors, bailiffs, ſheriffs, " and all other head officers, and every of them, finding " or knowing any manner of perſon or perſons uſing or " exer-

" exerciſing any unlawful games, contrary to this preſent " ſtatute, ſhall have full power and authority to commit " every ſuch offender to ward, there to remain without bail " or mainprize, until ſuch time that they ſo offending be " bounden by obligation to the king's uſe, in ſuch ſums of " money as by the diſcretions of the ſaid juſtices, mayors, " bailiffs, or other head officers, ſhall be thought reaſon- " able, that they or any of them ſhall not from henceforth " uſe ſuch unlawful games."

† *Sect.* 19. By 33. Hen. 8. c. 9. ſ. 18. it is enacted, " That where any ſuch forfeitures ſhall happen to be found " within the precinct of any franchiſe, leet, or lawday, then " the lord of the ſame franchiſe, leet, or lawday, to have the " one moiety thereof, and the other moiety thereof to any of " the king's ſubjects that will ſue for the ſame in any of the " king's courts, by action, information, bill, or otherwiſe, in " which action or ſuit the defendant ſhall not be admitted to " wage his law, nor any protection nor eſſoin ſhall be allow- " ed; and where ſuch forfeiture ſhall be found out of the " precinct of any franchiſe, leet, or lawday, that the moiety of " all ſuch forfeitures ſhall be to the king our ſovereign lord, " and the other moiety thereof to any the king's ſubjects " that will ſue for the ſame, by bill, plaint, action, informa- " tion, or otherwiſe, in any of the king's courts, in which " ſuit or action the defendant ſhall not be admitted to wage " his law, nor any protection or eſſoin ſhall be allowed." Within what time any ſuit ſhall be proſecuted upon this ſtatute, and who ſhall have the forfeitures.

† *Sect.* 20. But by 33. Hen. 8. c. 9. ſ. 21. it is provided, " That if any perſon or perſons have taken by leaſe, whe- " ther it be by word, writing, or otherwiſe, any houſe, al- " ley, or place, wherein any ſuch unlawful game now is, " and at the time of ſuch leaſe made, was uſed, that then " every ſuch leſſee ſhall, at the liberty of him or them to " whom ſuch leaſe is made, their executors, adminiſtrators, " or aſſigns, from the ſaid Feaſt of the Nativity of St. *John* " *Baptiſt*, be utterly void, except it be for breach of cove- " nants or agreements, or payment of rent due or to be due " at the ſaid Feaſt, or any time before, ſo that then at the " ſame Feaſt, or within one month next after the ſame, the " ſaid leſſee give knowledge to ſuch leſſor or leſſors, their " heirs and aſſigns, that he will no longer occupy the ſame, " and that then it ſhall be lawful to the inheritor, leſſor, " or owner thereof, or to his heirs and aſſigns, in the ſame " houſe, alley, or place, to re-enter." Leaſes of houſes where unlawful games be uſed.

† *Sect.* 21. By 33. Hen. 8. c. 9. ſ. 22. it is alſo provided, " That it ſhall be lawful for every maſter to licenſe his " or their ſervants to play at cards, dice, or tables with their " ſaid The ſervant by licence may play with his maſter.

" ſaid maſter, or with any other gentleman repairing to " their ſaid maſter, openly in his or their houſe, or in his " or their preſence, according to his or their diſcretion; " and that it ſhall be lawful to every ſuch ſervant, for every " time ſo being commanded or licenſed by his ſaid maſter, " as is aforeſaid, to play at cards, dice, or tables with " his ſaid maſter, or other gentlemen ſo to him repair- " ing; any thing in this act to the contrary notwithſtand- " ing."

In what caſes ſervants may play at dice, cards, tables, bowls, or tennis.

† *Sect.* 22. By 33. Hen. 8. c. 9. ſ. 23. it is alſo provided, " That it ſhall be lawful to every nobleman and other hav- " ing manors, lands, tenements, or other yearly profits, " for term of life in his own right, or in his wife's right, " to the yearly value of an hundred pounds or above, to " command, appoint, or licenſe, by his or their diſcretion, " his or their ſervants, or family of his or their houſe or " houſes, for to play within the precinct of his or their " houſes, gardens, or orchards, at cards, dice, tables, " bowls or tennis, as well among themſelves as other re- " pairing to the ſame houſe or houſes; and that they ſo " playing by commandment, appointment, or licence, as " is aforeſaid, ſhall not incur any danger or penalty con- " tained in this act for the ſame; this act or any thing " therein contained to the contrary thereof in any wiſe not- " withſtanding."

Certain offences puniſhable only at the aſſizes, quarter-ſeſſions, or in a leet. Raym. 154. 2. Mod. 246.

† *Sect.* 23. By 31. Eliz. c. 5. ſ. 7. it is enacted, " That " all ſuits to be purſued upon any ſtatute for uſing any " unlawful game, or for not uſing any lawful game, ſhall " be ſued and proſecuted in the general quarter-ſeſſions of " the peace, or aſſizes, of the ſame county where the offence " ſhall be committed, or otherwiſe enquired of, heard, and " determined in the aſſizes or general quarter-ſeſſions of the " peace of the ſame county where ſuch offence ſhall be " committed, or in the leet within which it ſhall happen, " and not in any wiſe out of the ſame county where ſuch " offence ſhall happen or be committed."

33. Hen. 8. c. 9. againſt unlawful games, made more effectual.

† *Sect.* 24. By 2. Geo. 2. c. 28. ſ. 9. which recites, " That by the ſtatute 33. Hen. 8. c. 9. no power is given unto the juſtices of the peace to demand and take from perſons found playing contrary to law, any other ſecurity than their own recognizances, that they or any of them ſhall not from thenceforth uſe ſuch unlawful games, unleſs ſuch perſons are ſo found playing contrary to law upon the view of one or more juſtice or juſtices of the peace:" it is further enacted, " That where it ſhall be proved " upon

" upon the oath of two or more credible witneſſes, before " any juſtice or juſtices of the peace, as well as where " ſuch juſtice or juſtices ſhall find, upon his or their own " view, that any perſon or perſons have or hath uſed or ex- " erciſed any unlawful game contrary to the ſaid ſtatute, " the ſaid juſtice or juſtices ſhall have full power and au- " thority to commit all and every ſuch offender and of- " fenders to priſon, without bail or mainprize, unleſs and " until ſuch offender and offenders ſhall enter into one or " more recognizance or recognizances, with ſureties or " without, at the diſcretion of the ſaid juſtice or juſtices " of the peace, that he or they reſpectively ſhall not from " thenceforth play at or uſe ſuch unlawful game."

No perſon ſhall keep a place for playing roly-poly, or other game with cards or dice.

† *Sect.* 25. By 18. Geo. 2. c. 34. ſ. 1. it is recited, " That whereas, notwithſtanding the many good and wholeſome laws now in being for preventing exceſſive and deceitful gaming, many perſons of ill fame and reputation, who have no viſible means of ſubſiſtence, do keep houſes, rooms, and other places for playing, and do permit perſons therein to play at cards, dice, and other devices, for large ſums of money, by means whereof divers young and unwary perſons, and others, are drawn in to loſe the greateſt part, and ſometimes all their ſubſtance; and it frequently happens they are thereby reduced to the utmoſt neceſſities, and betake themſelves to the moſt wicked courſes, which end in their utter ruin: and whereas a certain pernicious game called roulet, or roly-poly, is daily practiſed, and the laws now in being have, by experience, been found ineffectual to put a ſtop to ſuch pernicious practices:" and therefore enacted, " That no perſon or perſons, of what " condition ſoever, ſhall keep any houſe, room, or place " for playing, or permit or ſuffer any perſon or perſons " whatſoever, within any ſuch houſe, room, or place, to " play at the ſaid game of roulet, otherwiſe roly-poly, or " at any other game, with cards or dice, already prohibited " by the laws of this realm; and in caſe any perſon or per- " ſons whatſoever ſhall keep any ſuch houſe, room, or " place for playing, or permit or ſuffer any perſon or per- " ſons as aforeſaid to play at the ſaid game of roulet, other- " wiſe roly-poly, or at any other game, with cards or " dice already prohibited by law, ſuch perſon or perſons " ſo offending ſhall incur the pains and penalties, and be " liable to ſuch proſecution as is directed in and by the " ſtatute 12. Geo. 2. c. 28."

No privilege of parliament, &c.

† *Sect.* 26. By 18. Geo. 2. c. 34. ſ. 7. it is enacted, " That no privilege of parliament ſhall be allowed to any " perſon or perſons whatſoever againſt whom any proſecu-

" tion

" tion or proceedings ſhall be commenced or had, for " keeping of any public or common gaming-houſe, or any " houſe, room, or place for playing at any game or games " prohibited by this or any other act now in being againſt " exceſſive or deceitful gaming, any law, uſage, or cuſtom " to the contrary in any wiſe notwithſtanding."

Dalton c. 46. † *Sect.* 27. It is ſaid, that the above ſtatutes do not extend to perſons who occaſionally game in *a tavern*, or in *an inn*, nor to perſons who play at bowls in a ſkittle-ground *for their recreation*, or the like, if the houſe or place be not kept for the known, avowed, and common purpoſes of gaming.

Rex v. Clarke, Cowp. 35. † *Sect.* 28. And a conviction on 33. Hen. 8. c. 9. for playing at bowls and pins called *bulruſhing*, was quaſhed, becauſe the information did not alledge that the playing was in *one* of the defendant's *own orchards*, for it is only unlawful *ſub modo*.

Rex v. Howell, 3. Keb. 510. † *Sect.* 29. But it ſeems, that the keeping of a *cockpit* is not only an indictable offence at common law, but is conſidered as a gaming-houſe within the ſtatute 33. Hen. 8. c. 9 and therefore on a conviction on an indictment at common law, the Court will meaſure the fine by inflicting *forty ſhillings* for each day, according to the number of days ſuch cockpit was kept open.

Rex v. Dixon and his wife. 10. Mod. 335. † *Sect.* 30. It ſeems alſo, that an indictment for keeping a common gaming-houſe may be found againſt both huſband and wife; for it is not the property or ownerſhip of the houſe that is in queſtion, but the criminal management of it, in which the wife may probably have as great, nay a greater ſhare than the huſband.

Rex v. Clarke, Cowp. 36. † *Sect.* 31. It ſeems alſo, that an information ſtating the defendant to be *a labourer*, and the offence to have been committed on ſuch a day in the month of *Auguſt*, &c. is ſufficient to maintain a conviction on 33. Hen. 8. c. 9. ſ. 16. for it is apparent upon the face of the record that it was *out* of *Chriſtmas*.

Rex v. Clarke, Cowp 36. † *Sect.* 32. But it has been decided, that a perſon playing at bowls contrary to this ſtatute, cannot be puniſhed as a diſorderly perſon under the ſtatute 17. Geo. 2. c. 5. ſ. 2.

As

As to THE THIRD POINT, *viz.* The offence of exceſſive gaming.

† *Sect.* 33. By 16. Car. 2. c. 7. IT IS RECITED, "That whereas all lawful games and exerciſes ſhould not be otherwiſe uſed than as innocent and moderate recreations, and not as conſtant trades or callings to gain a living, or make unlawful advantage thereby; and whereas by the immoderate uſe of them many miſchiefs and inconveniences do ariſe, and are daily found, to the maintaining and encouraging of ſundry idle, looſe, and diſorderly perſons in their diſhoneſt, lewd, and diſſolute courſe of life, and to the circumventing, deceiving, couſening, and debauching of many of the younger ſort both of the nobility and gentry and others, to the loſs of their precious time, and the utter ruin of their eſtates and fortunes, and withdrawing them from noble and laudable employments and exerciſes:" AND ENACTED, "That if "any perſon or perſons, of any degree or quality whatſoever, "at any time or times after the nine-and-twentieth day of "*September* 1664, do or ſhall, by any fraud, ſhift, couſenage, "circumvention, deceit, or unlawful device, or ill practice "whatſoever, in playing at or with cards, dice, tables, tennis, bowls, kittles, ſhovel-board; or in or by cock-"fightings, horſe races, dog-matches, foot races, or other "paſtimes, game or games whatſoever, or in or by bearing "a ſhare or part in the ſtakes, wagers, or adventures, or in "or by betting on the ſides or hands of ſuch as do or ſhall "play, act, ride, or run as aforeſaid, win, obtain, or acquire "to him or themſelves, or to any other or others, any ſum "or ſums of money, or other valuable thing or things whatſoever; that then every perſon and perſons ſo offending "as aforeſaid, ſhall *ipſo facto* forfeit and loſe treble the ſum "or value of money or other thing or things ſo won, "gained, obtained, or acquired; the one moiety thereof to "our ſovereign lord the king, his heirs and ſucceſſors, and "the other moiety thereof unto the perſon or perſons "grieved, or who ſhall loſe the money or other thing or "things ſo gained; ſo as every ſuch loſer and perſon "grieved, in that behalf, do or ſhall proſecute and ſue for "the ſame within ſix calendar months next after ſuch play; "and in default of ſuch proſecution, the ſame other moiety "to ſuch perſon or perſons as ſhall or will proſecute or ſue "for the ſame within one year next after the ſaid ſix months "expired: and that the ſaid forfeitures ſhall or may be ſued "for or recovered by action of debt, bill, plaint, or information, in any of his majeſty's courts at *Weſtminſter*, "wherein no eſſoin, protection, or wager of law, ſhall be "allowed: and that all and every ſuch plaintiff or plaintiffs, "informer

5. Mod. 1. 4. 35.
33. H. 8. c. 9.
2. & 3. P. & M. c. 9.
See 2. Burr. 1080.

Deceits and couſenages in gaming. Vin. V. 14.—4, &c.

18. Geo. 2. c. 34.
See Cowp 282.
See 9. Ann. c. 14.

How to be ſued for and recovered.

" informer or informers, ſhall in every ſuch ſuit and pro-
" ſecution have and recover his and their treble coſts againſt
" the perſon offending and forfeiting as aforeſaid, any law,
" ſtatute, cuſtom, or uſage to the contrary in any wiſe not-
" withſtanding."

Prevention of exceſſive and immoderate gaming.

† *Sect.* 34. By 16. Car. 2. c. 7. ſ. 3. " For the better
" avoiding and preventing of all exceſſive and immoderate
" playing and gaming for the time to come, it is further
" enacted, that if any perſon or perſons ſhall play at any of
" the ſaid games, or any other paſtime, game, or games
" whatſoever (other than with and for ready money), or
" ſhall bet on the ſides or hands of ſuch as do or ſhall play
" thereat, and ſhall loſe any ſum or ſums of money, or other
1. Vent. 253. " thing or things ſo played for, exceeding the ſum of one
1. Lutw. 180. " hundred pounds, at any one time or meeting, upon ticket
2. Mod. 54. " or credit, or otherwiſe, and ſhall not pay down the ſame
1. Salk. 344. " at the time when he or they ſhall ſo loſe the ſame, the
2. Lev. 94. " party and parties who loſeth or ſhall loſe the ſaid monies,
4. Mod. 409. " or other thing or things ſo played or to be played for,
" above the ſaid ſum of one hundred pounds, ſhall not in that
" caſe be bound or compelled or compellable to pay or
" make good the ſame; but the contract and contracts for
See Dougl. 714, 715. " the ſame, and for every part thereof, and all and ſingular
" judgments, ſtatutes, recognizances, mortgages, convey-
" ances, aſſurances, bonds, bills, ſpecialties, promiſes, co-
" venants, agreements, and other acts, deeds, and ſecurities
" whatſoever, which ſhall be obtained, made, given, ac-
" knowledged, or entered into, for ſecurity or ſatisfaction
" of or for the ſame, or any part thereof, ſhall be utterly
" void and of none effect; and that the ſaid perſon or per-
" ſons, ſo winning the ſaid monies or other things, ſhall
The penalty. " forfeit and loſe treble the value of all ſuch ſum and ſums
" of money, or other thing or things, which he ſhall ſo
" win, gain, obtain, or acquire, above the ſaid ſum of one
" hundred pounds; the one moiety thereof to our ſaid ſo-
" vereign lord the king, his heirs and ſucceſſors, and the
" other moiety thereof to ſuch perſon or perſons as ſhall
" proſecute or ſue for the ſame within one year next after
" the time of ſuch offence committed; and to be ſued for
" by action of debt, bill, plaint, or information, in any of
" his majeſty's courts of record at *Weſtminſter*, wherein no
" eſſoin, protection, or wager of law, ſhall be allowed: and
" that every ſuch plaintiff or plaintiffs, informer or in-
" formers, ſhall, in every ſuch ſuit and proſecution, have
" and receive his treble coſts againſt the perſon and perſons
" offending and forfeiting as aforeſaid, any law, cuſtom, or
" uſage to the contrary notwithſtanding."

† *Sect.*

† *Sect.* 35. By 9. Ann. c. 14. IT IS RECITED, That "the laws now in force for preventing the miſchiefs which "may happen by gaming have not been found ſufficient "for that purpoſe; therefore, for the further preventing "of all exceſſive and deceitful gaming, IT IS ENACTED, "That all notes, bills, bonds, judgments, mortgages, or "other ſecurities or conveyances whatſoever, given, granted, "drawn, or entered into, or executed, by any perſon or "perſons whatſoever, where the whole or any part of "the conſideration of ſuch conveyances or ſecurities ſhall "be for any money, or other valuable thing whatſoever, "won by gaming or playing at cards, dice, tables, tennis, "bowls, or other game or games whatſoever, or by bet-"ting on the ſides or hands of ſuch as do game at any "of the games aforeſaid, or for the reimburſing or repay-"ing any money knowingly lent or advanced for ſuch "gaming or betting as aforeſaid, or lent or advanced at "the time and place of ſuch play, to any perſon or per-"ſons ſo gaming or betting as aforeſaid, or that ſhall, "during ſuch play, ſo play or bet, ſhall be utterly void, "fruſtrate, and of none effect, to all intents and purpoſes "whatſoever, any ſtatute, law, or uſage to the contrary "thereof in any wiſe notwithſtanding; and that where ſuch "mortgages, ſecurities, or other conveyances, ſhall be of "lands, tenements, or hereditaments, or ſhall be ſuch as "incumber or affect the ſame, ſuch mortgages, ſecurities, "or other conveyances, ſhall enure and be to and for the "ſole uſe and benefit of, and ſhall devolve upon, ſuch per-"ſon or perſons as ſhould or might have, or be intitled to, "ſuch lands, tenements, or hereditaments, in caſe the ſaid "grantor or grantors thereof, or the perſon or perſons ſo "incumbring the ſame, had been naturally dead, and as if "ſuch mortgages, ſecurities, or other conveyances, had "been made to ſuch perſon or perſons ſo to be intitled "after the deceaſe of the perſon or perſons ſo incumbring "the ſame; and that all grants or conveyances to be made "for the preventing of ſuch lands, tenements, or heredita-"ments, from coming to or devolving upon ſuch perſon "or perſons hereby intended to enjoy the ſame as aforeſaid, "ſhall be deemed fraudulent and void, and of none effect, "to all intents and purpoſes whatſoever."

Mortgages, &c. where the conſideration is for money won by gaming, or for repayment of money lent at gaming, &c. ſhall be void. And where ſuch mortgages, &c. ſhall encumber any lands, &c. they ſhall devolve to ſuch perſon as ſhould have been intitled to them in caſe ſuch grantor had been dead, &c. And all conveyances to hinder ſuch lands from devolving, &c. ſhall be void. See 2. Bur. 1080. 1. Wilſ. 220. 2. Wilſ. 36. 67. 309.

† *Sect.* 36. By 9. Ann. c. 14. ſ. 2. "Any perſon or "perſons whatſoever, who ſhall at any time or ſitting, by "playing at cards, dice, tables, or other game or games "whatſoever, or by betting on the ſides or hands of ſuch "as do play at any of the games aforeſaid, loſe to any one "or more perſon or perſons ſo playing or betting, in the "whole, the ſum or value of ten pounds, and ſhall pay or "deliver

The loſer of 10l. at cards, &c. may ſue for the money within three months. See 4. Bur. 2018.

" deliver the ſame or any part thereof, the perſon or per-
" ſons ſo loſing and paying or delivering the ſame, ſhall be
" at liberty, within three months then next, to ſue for and
" recover the money or goods ſo loſt and paid or delivered,
" or any part thereof, from the reſpective winner or win-
" ners thereof, with coſts of ſuit, by action of debt founded
" on this act, to be proſecuted in any of her majeſty's courts
" of record, in which actions or ſuits no eſſoin, protection,
" wager of law, privilege of parliament, or more than one
" imparlance, ſhall be allowed; in which action it ſhall be
" ſufficient for the plaintiff to alledge that the defendant or
" defendants are indebted to the plaintiffs, or received to the
" plaintiff's uſe, the monies ſo loſt and paid, or converted
" the goods won of the plaintiff to the defendant's uſe,
" whereby the plaintiff's action accrued to him, according
" to the form of this ſtatute, without ſetting forth the ſpe-
and if the loſers do not ſue, &c. any other perſons may; " cial matter: and in caſe the perſon or perſons who ſhall
" loſe ſuch money or other thing as aforeſaid, ſhall not,
" within the time aforeſaid, really and *bonâ fide*, and with-
" out covin or colluſion, ſue, and with effect proſecute for
" the money or other thing ſo by him or them loſt and
" paid or delivered as aforeſaid, it ſhall and may be lawful
" to and for any perſon or perſons, by any ſuch action or
and recover with treble value; one moiety to the informer, the other to the poor. " ſuit as aforeſaid, to ſue for and recover the ſame, and treble
" the value thereof, with coſts of ſuit, againſt ſuch winner
" or winners as aforeſaid; the one moiety thereof to the
" uſe of the perſon or perſons that will ſue for the ſame,
" and the other moiety to the uſe of the poor of the pariſh
" where the offence ſhall be committed."

† *Sect.* 37. By 9. Ann. c. 14. ſ. 3. " For the better diſ-
The perſon ſued ſhall anſwer upon oath to diſcover the money won. " covery of the monies or other things ſo won, and to be
" ſued for and recovered as aforeſaid, it is further enacted,
" That all and every the perſon or perſons, who by virtue
" of this preſent act ſhall or may be liable to be ſued for the
" ſame, ſhall be obliged and compellable to anſwer upon
" oath ſuch bill or bills as ſhall be preferred againſt him or
" them for diſcovering the ſum or ſums of money or other
" thing ſo won at play as aforeſaid."

† *Sect.* 38. But by 9. Ann. c. 14. ſ. 4. it is provided,
The perſon who ſhall ſo diſcover and repay, ſhall be indemnified from further puniſhment. " That, upon the diſcovery and repayment of the money or
" other thing ſo to be diſcovered and repaid as aforeſaid,
" the perſon or perſons who ſhall ſo diſcover and repay the
" ſame as aforeſaid, ſhall be acquitted, indemnified, and diſ-
" charged from any further or other puniſhment, forfeiture,
" or penalty, which he or they may have incurred by the
" playing for or winning ſuch money or other thing ſo diſ-
" covered and repaid as aforeſaid, any former or other ſta-
" tute,

" tute, law, or uſage, or any thing in this preſent act con-
" tained, to the contrary thereof in any wiſe notwith-
" ſtanding."

† *Sect.* 39. By 9. Ann. c. 14. ſ. 5. it is further enacted, " That if any perſon or perſons whatſoever do or ſhall, by " any fraud or ſhift, couſenage, circumvention, deceit, or " unlawful device or ill practice whatſoever, in playing at " or with cards, dice, or any the games aforeſaid, or in or " by bearing a ſhare or part in the ſtakes, wagers, or adven- " tures, or in or by betting on the ſides or hands of ſuch as " do or ſhall play as aforeſaid, win, obtain, or acquire, to " him or themſelves, or to any other or others, any ſum or " ſums of money, or other valuable thing or things what- " ſoever, or ſhall at any one time or ſitting win of any one " or more perſon or perſons whatſoever above the ſum or " value of ten pounds; that then every perſon or perſons ſo " winning by ſuch ill practice as aforeſaid, or winning at " any one time or ſitting above the ſaid ſum or value of " ten pounds, and being convicted of any of the ſaid of- " fences upon an indictment or information to be exhibited " againſt him or them for that purpoſe, ſhall forfeit five " times the value of the ſum or ſums of money or other " thing ſo won as aforeſaid; and, in caſe of ſuch ill practice " as aforeſaid, ſhall be deemed infamous, and ſuffer ſuch " corporal puniſhment as in caſes of wilful perjury; and " ſuch penalty to be recovered by ſuch perſon or perſons " as ſhall ſue for the ſame by ſuch action as aforeſaid."

Any perſon winning by fraud, &c. above 10l. at one ſitting, and convicted thereof on indictment, &c. ſhall forfeit five times the value, be deemed infamous, and ſuffer as in caſes of wilful perjury.

† *Sect.* 40. By 9. Ann. c. 14. ſ. 6. after reciting, " that divers lewd and diſſolute perſons live at great expences, having no viſible eſtate, profeſſion, or calling, to maintain themſelves, but ſupport thoſe expences by gaming only," it is further enacted, " That it ſhall and may be lawful for " any two or more of her majeſty's juſtices of the peace in " any county, city, or liberty whatſoever to cauſe to come " or to be brought before them, every ſuch perſon or perſons " within their reſpective limits, whom they ſhall have juſt " cauſe to ſuſpect to have no viſible eſtate, profeſſion, or " calling, to maintain themſelves by, but do for the moſt " part ſupport themſelves by gaming; and if ſuch perſon " or perſons ſhall not make it appear to ſuch juſtices, that " the principal part of his or their expences is not main- " tained by gaming, that then ſuch juſtices ſhall require of " him or them ſufficient ſecurities for his or their good be- " haviour for the ſpace of twelve months; and in default " of his or their finding ſuch ſecurities, to commit him or " them to the common gaol, there to remain until he or " they ſhall find ſuch ſecurities as aforeſaid."

Two juſtices may cauſe perſons who have no viſible eſtate, &c. to be brought before them, and they ſhall find ſureties for their good behaviour, or be committed.

Perſons ſo finding ſureties and playing for 20s. forfeit recognizance.

† *Sect.* 41. By 9. Ann. c. 14. ſ. 7. "If ſuch perſon he "perſons ſo finding ſureties as aforeſaid ſhall, during tor "time for which he or they ſhall be ſo bound to the good "behaviour, at any one time or ſitting, play or bet for any "ſum or ſums of money, or other thing, exceeding in the "whole the ſum or value of twenty ſhillings, that then "ſuch playing ſhall be deemed or taken to be a breach of "his or their behaviour, and a forfeiture of the recogni-"zance given for the ſame."

Aſſaulting, &c. on account of money won at play, to forfeit all his goods, and be impriſoned two years.

† *Sect.* 42. And by 9. Ann. c. 14. ſ. 8. "For the pre-"venting of ſuch quarrels as ſhall and may happen upon the "account of gaming, it is enacted, That in caſe any perſon "or perſons whatſoever ſhall aſſault and beat, or ſhall chal-"lenge or provoke to fight, any other perſon or perſons "whatſoever, upon account of any money won by gaming, "playing or betting at any of the games aforeſaid, ſuch per-"ſon or perſons aſſaulting and beating, or challenging or "provoking to fight, ſuch other perſon or perſons upon "the account aforeſaid, ſhall, being thereof convicted "upon an indictment or information to be exhibited againſt "him or them for that purpoſe, forfeit to her majeſty, her "heirs and ſucceſſors, all his goods, chattels, and perſonal "eſtate whatſoever, and ſhall alſo ſuffer impriſonment, with-"out bail or mainprize, in the common gaol of the county "where ſuch conviction ſhall be had, during the term of "two years."

This act ſhall not extend to prevent gaming in any of the queen's palaces during her reſidence there, &c.

† *Sect.* 43. But by 9. Ann. c. 14. ſ. 9. it is provided, "That nothing in this act contained ſhall extend to prevent "or hinder any perſon or perſons from gaming or playing "at any of the games aforeſaid within any of her majeſty's "palaces of *St. James* or *Whitehall*, during ſuch time as her "majeſty, her heirs or ſucceſſors, ſhall be actually reſident "at either of the ſaid two palaces; or in any other royal "palaces, where her majeſty, her heirs or ſucceſſors, ſhall "be actually reſident, during the time of ſuch actual reſi-"dence; ſo as ſuch playing be not in any houſe, lodging, "or other part of any of the ſaid palaces, the freehold or "inheritance whereof is or ſhall be out of the crown, or is "or ſhall be in leaſe to any perſon or perſons, during ſuch "time as ſuch freehold and inheritance ſhall be out of the "crown, or ſuch leaſe ſhall continue, and ſo as ſuch play-"ing be for ready money only."

Court of equity, where a bill ſhall be filed for any ſum won, may enforce their decree as in other cauſes.

† *Sect.* 44. By 18. Geo. 2. c. 34. ſ. 3. which recites 9. Ann. c. 14. it is enacted, "That in caſe any bill or bills "ſhall be brought, exhibited, and filed, in any court of

"equity,

" equity, againſt any perſon or perſons, for any ſum or ſums " of money won by any perſon or perſons, it ſhall and " may be lawful for ſuch court wherein ſuch bill ſhall be " brought, exhibited, and filed, to proceed and decree there- " upon, and enforce ſuch decree or decrees as ſhall be made " in purſuance thereof, in the ſame manner as is practiſed " and uſed in other cauſes, upon bills and anſwers de- " pending in the courts where ſuch bill ſhall be ſo brought " and exhibited "

† *Sect.* 45. By 18. Geo. 2 c. 34. ſ. 8. " If any perſon " ſhall win or loſe at play, or by betting, at any one time, " the ſum or value of ten pounds, or within the ſpace of " twenty-four hours the ſum or value of twenty pounds, " ſuch perſon ſhall be liable to be indicted for ſuch offence " within ſix months after it is committed, either before his " majeſty's juſtices of the king's bench, aſſize, gaol-delivery, " or grand ſeſſions; and being thereof legally convicted, " ſhall be fined five times the value of the ſum ſo won or " loſt, which fine (after ſuch charges as the Court ſhall " judge reaſonable allowed to the proſecutors and evidence " out of the ſame) ſhall go to the poor of the pariſh or " place where ſuch offence ſhall be committed."

Perſons loſing 10l. at one time, or 20l. in 24 hours, may be indicted;

and fined five times the value.

† *Sect.* 46. But by 18. Geo. 2. c. 34. ſ. 9. it is provided, " That if any perſon ſo offending ſhall diſcover any " other perſon ſo offending, ſo that ſuch perſon be there- " upon convicted, the perſon ſo diſcovering ſhall be diſ- " charged and indemnified from all penalties by reaſon of " any ſuch offence, if ſuch perſon ſo diſcovering hath not " been before convicted thereof, and ſhall be admitted as " an evidence to prove the ſame."

Offenders diſcovering others diſcharged.

† *Sect.* 47. It has been determined, that a wager on a collateral matter, and not on the event of the game played at, is not within theſe ſtatutes; as where two perſons were playing at *back-gammon*, and one of them having touched a man, the other laid him a wager of a hundred pounds, that having touched it he was bound by the law of the game to play the man. But no action will lie on a wager reſpecting the *mode of playing* an illegal game, as *hazard*.

Pope *v.* St. Ledger, Salk. 344.

Brown *v.* Leeſon, 2. H. Bl. Rep. 43.

† *Sect.* 48. So alſo where *A.* betted *B.* that one *C.* would not run four miles in twenty-one minutes, it was adjudged not within the ſtatutes, becauſe as *C.* was not playing at ſuch game, it was not a wager within the act; for *C.* might be running for his amuſement, and not to win any bet.

Lynal *v.* Longbotham, 2. Wilſ. 36.

2. Wilſ. 36.

† *Sect.* 49. It is however decided, that a *foot-race*, whether the race be upon a given diſtance or againſt a certain time, is a game prohibited by 9. Ann. c. 14.

Brown *v.* Beckley, Cowp. 282.

† *Sect.* 50. So alſo a wager, that *A.* did not find within ſuch a time a man who ſhould carry *on foot* twenty-four ſtone weight ten miles in fifteen hours, has been adjudged a wager within the ſtatute.

Jefferies *v.* Walter, 1. Wilſ. 220.

† *Sect.* 51. It ſeems alſo, that *cricket* is an unlawful game within the ſtatute 9. Ann. c. 14.

Blaxton *v.* Pye, 2. Wilſ. 309. Goodburn *v.* Marley, 2. Stra. 1159.

† *Sect.* 52. So alſo it has been adjudged, that laying above ten pounds upon *a horſe-race* is an illegal bet within the ſtatutes of 16. Car. 2. c. 7. and 9. Ann. c. 14. for that theſe ſtatutes ought to be extended to all *ſports* as well as *games*, in order to prevent exceſſive betting.

Clayton *v.* Jennings, Black. 706.

† *Sect.* 53. So alſo it is determined, that a wager of *ten pounds* to *five pounds* upon a *horſe-race* is within the act, although the race was for a legal plate; for although *five pounds* are leſs than the ſum mentioned in the ſtatute, yet as the loſer of the ten pounds would not be obliged to pay, the wager is bad for want of mutual riſque.

Bones *v.* Booth, 2. Bl. Rep. 1226.

† *Sect.* 54. It hath been determined, that if two perſons play at cards from *Monday* evening to *Tueſday* evening, without any interruption except for an hour or two at dinner, and one of them has then won a balance of ſeventeen guineas, this is won at one ſitting within the ſtatute.

Noell *v.* Reynolds, 2. Show. 185.

† *Sect.* 55. So alſo it is ſaid, that if above an hundred pounds be loſt upon tick at one ſitting, although to ſeveral perſons, it cannot be recovered.

Anonymous, 8. Mod. 167.

† *Sect.* 56. It ſeems, that if a loſer prefer an indictment againſt a winner on the ſtatute 9. Ann. c. 14. and the grand jury find the bill, the Court will not permit an information to be filed againſt the defendant, although the indictment was quaſhed, and, of courſe, the defendant never tried upon it; for the grand jury may find another bill for the ſame offence.

Rex *v.* Lookup, 2. Stra. 1048.

† *Sect.* 57. It is alſo ſettled, that if a defendant be convicted on an information on the ſtatute 9. Ann. c. 14. the Court can only give judgment *quòd convictus eſt*, and cannot ſet a fine on the offender to five times the value, but that an

an action must be brought on the judgment to recover the penalty.

† *Sect.* 58. It is settled, that if one person *lend* another person money for the very purpose of gaming with, yet if he take no written security for it, the lender may recover it back by an action of *assumpsit* on the implied contract; for the statute only makes *securities* void, and is silent respecting *contracts*; and perhaps the Legislature thought that a very extensive and prejudicial credit was not likely to be given where no written security could be legally taken. Barjean *v.* Walmsley, 2. Stra. 1249.

† *Sect.* 59. So also money paid by *A.* at the request of *B.* for the amount of a bet which *B.* had lost to another person, may be recovered on the implied contract. 2. Wilf. 309.

† *Sect.* 60. And it has been decided, that where a security, as for instance a bill of exchange, is given for 600l. and it appears that part of it was for money *won at play*, and part for money *lent* at the time and place of play, the contract is divisible, and the holder may recover for so much as was *lent* at the time and place of play. Robinson *v.* Bland, 2. Burr. 1078.

† *Sect.* 61. But a security of any kind given for money won at play is absolutely void, even in the hands of an innocent indorser, who has *bonâ fide* paid *value* for it, and had no notice that it was originally given on an illegal consideration; and the court of chancery may order the void security to be given up and cancelled, and any money which may have been paid upon it to be refunded. 8. Mod. 57. 2. Mod. 279. Dougl. 743. Rawdon *v.* Shadwell, 2. Stra. 1249.

As to THE FOURTH POINT, *viz.* The offence of horse-racing.

† *Sect.* 62. By 13. Geo. 2. c. 19. s. 1. "Whereas the great number of horse-races for small plates, prizes, or sums of money, have contributed very much to the encouragement of idleness, to the impoverishment of many of the meaner sort of the subjects of this kingdom, and the breed of strong and useful horses hath been much prejudiced thereby:" for remedy thereof it is ENACTED, "That no "person or persons whatsoever shall enter, start, or run "any horse, mare, or gelding, for any plate, prize, sum of "money, or other thing, unless such horse, mare, or "gelding, shall be truly and *bonâ fide* the property of, and "belonging to such person so entering, starting, or run-"ning the same horse, mare, or gelding; nor shall any "one person enter and start more than one horse, mare, "or Horses to be entered by the owners, and no more than one at a time.

" or gelding, for one and the ſame plate, prize, or ſum of " money, or other thing; and in caſe any perſon or per- " ſons ſhall enter, ſtart, or run any horſe, mare, or gelding, " not being the property truly and *bonâ fide* of ſuch perſon " ſo entering, ſtarting, or running the ſame for any plate, " prize, ſum of money, or other thing, the ſaid horſe, " mare, or gelding, or the value thereof, ſhall be forfeited, " to be ſued for and recovered, and diſpoſed of, in manner " as is hereinafter mentioned; and in caſe any perſon or " perſons ſhall enter and ſtart more than one horſe, mare, " or gelding, for one and the ſame plate, prize, or ſum of " money, or other thing, every ſuch horſe, mare, or geld- " ing (other than the firſt entered horſe, mare, or gelding), " or the value thereof, ſhall be forfeited, to be ſued for " and recovered, and diſpoſed of, in manner as hereinafter " is mentioned."

No plate to be run for under 50l. value

† *Sect.* 63. By 13. Geo. 2. c. 19. ſ. 2. it is further enacted, " That no plate, prize, ſum of money, or other " thing, ſhall be run for by any horſe, mare, or gelding, " or advertiſed, publiſhed, or proclaimed, to be run for " by any horſe, mare, or gelding, unleſs ſuch plate, prize, " or ſum of money ſhall be of the full, real, and intrin- " ſick value of fifty pounds, or upwards; and in caſe any " perſon or perſons ſhall enter, ſtart, or run any horſe, " mare, or gelding, for any plate, prize, ſum of money, or " other thing of leſs value than fifty pounds, or ſhall make, " print, advertiſe, publiſh, or proclaim any advertiſement " or notice of any plate, prize, ſum of money, or other " thing of leſs value than fifty pounds as aforeſaid, to be " run for by any horſe, mare, or gelding; every ſuch per- " ſon or perſons ſo entering, ſtarting, or running ſuch " horſe, mare, or gelding, for ſuch plate, prize, ſum of " money, or other thing of leſs value than fifty pounds as
on penalty of 200l. " aforeſaid, ſhall forfeit and loſe the ſum of two hundred " pounds, to be ſued for, recovered, and diſpoſed of in " ſuch manner as is hereinafter preſcribed and directed; " and every perſon or perſons who ſhall make, print, pub- " liſh, advertiſe, or proclaim any advertiſement or notice of " any plate, prize, ſum of money, or other thing of leſs " value than fifty pounds as aforeſaid, to be run for by any " horſe, mare, or gelding, ſhall forfeit and loſe the ſum of " one hundred pounds."

† *Sect.* 64. By 13. Geo. 2. c. 19. ſ. 3. it is further enacted, " That no horſe, mare, or gelding, being of the " age of five years, ſhall be entered, ſtarted, or run for any " plate, prize, ſum of money, or other thing whatſoever, unleſs

" unleſs ſuch horſe, mare, or gelding, ſhall carry ten ſtone " weight, computing fourteen pounds to each ſtone " weight; and that no horſe, mare, or gelding, being of " the age of ſix years, ſhall be entered, ſtarted, or run for " any plate, prize, ſum of money, or other thing whatſo- " ever, unleſs ſuch horſe, mare, or gelding, ſhall carry " eleven ſtone weight, computing fourteen pounds to each " ſtone weight; and that no horſe, mare, or gelding, " being of the age of ſeven years, ſhall be entered, ſtarted, " or run for any plate, prize, ſum of money, or other thing " whatſoever, unleſs ſuch horſe, mare, or gelding, ſhall " carry twelve ſtone weight, computing fourteen pounds " to each ſtone weight; and in caſe any perſon or perſons " ſhall enter, ſtart, or run any horſe, mare, or gelding, of " either of the ages aforeſaid, for any plate, prize, or ſum " of money or other thing, carrying leſs than the weights " hereinbefore directed to be carried, ſuch horſe, mare, or " gelding, or the value thereof, ſhall be forfeited, and the " perſon or perſons ſo entering, ſtarting, or running ſuch " horſe, mare, or gelding, ſhall forfeit and loſe the ſum of " two hundred pounds."

Five years old horſes to carry ten ſtone,

ſix years old eleven ſtone,

ſevenyears old twelve ſtone,

† *Sect.* 65. By 13. Geo. 2. c. 19. ſ. 4. " Every race that " ſhall be hereafter run for any plate, prize, or ſum of " money, ſhall be begun and ended in the ſame day."

Race to be begun and ended in one day.

† *Sect.* 66. By 13. Geo. 2. c. 19. ſ. 5. it is further enacted, " That no perſon or perſons whatſoever ſhall ſtart " or run any match with or between any horſe, mare, or " gelding, for any ſum of money, plate, prize, or other " thing whatſoever, unleſs ſuch match ſhall be ſtarted or " run at *Newmarket Heath*, in the counties of *Cambridge* and " *Suffolk*, or *Black Hambleton*, in the county of *York*, or the " ſaid ſum of money, plate, prize, or other thing, be of the " real and intrinſick value of fifty pounds, or upwards: " and in caſe any perſon or perſons ſhall ſtart or run any " ſuch match at any other place than *Newmarket Heath* or " *Black Hambleton* aforeſaid, or for any plate, prize, ſum of " money, or other thing of leſs value than fifty pounds, " every ſuch perſon or perſons ſhall forfeit and loſe the " ſum of two hundred pounds."

Matches to be at *Newmarket* and *Black Hambleton* only, and for not leſs than 50l.

† *Sect.* 67. By 13. Geo. 2. c. 19. ſ. 6. it is further enacted, " That all penalties and forfeitures incurred by " any perſon or perſons for any offence againſt this act " ſhall be ſued for and recovered by any action, bill, plaint, " or information, in any of his majeſty's courts of record " at *Weſtminſter*, or at the aſſizes, and ſhall be diſpoſed of, " one moiety thereof to the uſe of ſuch perſon or perſons

" as

" as ſhall ſo ſue for the ſame, and the other moiety to the " uſe of the poor of ſuch pariſh or place where the offence " ſhall be committed; except ſuch one moiety of ſuch " penalties and forfeitures as ſhall be incurred by, and " recovered of any perſon or perſons within the county of " *Somerſet*; which ſaid one moiety ſhall go and be applied " to and for the uſe and benefit of the poor perſons " admitted into the hoſpital or infirmary lately erected in " the city of *Bath* for the benefit of poor perſons reſorting " to the ſaid city for the benefit of the mineral waters " there."

Entrance money to be paid to the ſecond beſt horſe.

† *Sect.* 68. By 13. Geo. 2. c. 19. ſ. 7. it is further enacted, " That all and every ſum or ſums of money to be " paid for entering of any horſe, mare, or gelding, to ſtart " or run for any plate, prize, ſum of money, or other thing, " ſhall go and be paid to the ſecond beſt horſe, mare, or " gelding, which ſhall ſtart or run for ſuch plate, prize, or " ſum of money, as aforeſaid."

Gifts left for annual races not to be altered.

† *Sect.* 69. By 13. Geo. 2. c. 19. ſ. 8. " Provided always, " that nothing herein contained ſhall extend, or be conſtrued to extend, to prevent the ſtarting or running any " horſe, mare, or gelding, for any plate, prize, or other " thing or things now iſſuing out of, or paid for, or by the " rents, iſſues, and profits of any lands, tenements, or " hereditaments, or of or by the intereſt of any ſum or ſums " of money now chargeable with the ſame, or appropriated " for that purpoſe."

† *Sect.* 70. By 13. Geo. 2. c. 19. ſ. 10. it is further enacted, " That in any action, bill, plaint, or information, " to be brought or commenced by virtue of this act, no " eſſoin, protection, wager of law, or more than one im- " parlance, ſhall be allowed; and that over and above the " penalties and forfeitures to be recovered by virtue of this " act, the plaintiff or informer ſhall recover his or her Double coſts. " double coſts."

† *Sect.* 71. But by 18. Geo. 2. c. 34. ſ. 11. AFTER RECITING the third ſection of the above ſtatute, AND THAT " the thirteen royal plates of one hundred guineas each, annually run for, as alſo the high prices that are conſtantly given for horſes of ſtrength and ſize, are ſufficient to encourage breeders to raiſe their cattle to the utmoſt ſize and ſtrength poſſible;" it is therefore enacted, " That it ſhall " and may be lawful for any perſon or perſons to run any " match, or to ſtart and run for any plate, prize, ſum of " money, or other thing, of the real and intrinſic value of " fifty

" fifty pounds or upwards, at any weights whatſoever, and " at any place or places whatſoever, without incurring or " being liable to the penalty or penalties in the ſaid act of " the thirteenth year of his majeſty's reign, relating to " weights as afore-mentioned, and in the ſame manner as " might have been done if the ſaid act had never been " made; any thing herein contained to the contrary not- " withſtanding."

Two guineas to be paid previous to entering any horſe to run for a plate,

† *Sect.* 72. By 24. Geo. 3. c. 31. ſ. 5. it is further enacted, " That the owner of every horſe, mare, or gelding, entered " to ſtart or run for any plate, prize, ſum of money, or " other thing, ſhall, previous to the entering or ſtarting " ſuch horſe, mare, or gelding, pay the ſum of two pounds " two ſhillings, as the duty for one year; which ſaid money " ſhall be paid, for the uſe of his majeſty, his heirs and " ſucceſſors, into the hands of the clerk of the courſe, " book-keeper, or other perſon authorized to make the " entry of ſuch horſe, mare, or gelding, being to ſtart or " run for ſuch plate, prize, ſum of money, or other thing, " as aforeſaid; and if any owner of ſuch horſe, mare, or " gelding ſhall, previous to the ſtarting, neglect or refuſe to " pay the ſaid ſum of two pounds two ſhillings for ſuch " entrance to the clerk of the courſe, book-keeper, or other " perſon authorized to make the entry as aforeſaid, the " owner or owners of every ſuch horſe, mare, or gelding, " ſhall forfeit and pay the ſum of twenty pounds, to be re- " covered and applied in ſuch manner as hereinafter is " directed."

on penalty of 20l.

Penalty on clerk of the courſe, &c.

† *Sect.* 73. By 24. Geo. 3. c. 31. ſ. 6. it is further enacted, " That every clerk of the courſe, book-keeper, or other " perſon, ſo receiving the ſaid ſum of two pounds two " ſhillings as entrance money, ſhall, within fourteen days " after the receipt thereof, give an account of all monies " received by him for horſes ſo entered to ſtart as aforeſaid, " to the diſtributor of ſtamps in the county where the race " was run, upon demand made by ſuch diſtributor for the " ſame, and producing his appointment as diſtributor under " the hands and ſeals of three of the commiſſioners of his " majeſty's ſtamp-duties; and in caſe of not accounting " for and paying the ſame, he ſhall, for every default, in " not delivering ſuch accounts, pay the ſum of one hundred " pounds; and for every default of payment of the monies " due on ſuch accounts, forfeit and pay double the amount " of the monies due on the ſaid accounts at the time of " ſuch default."

† *Sect.*

Allowance to be made to the clerk of the course, &c.

† *Sect.* 74. By 24. Geo. 3. c. 31. ſ. 7. it is further enacted, "That the ſaid head diſtributors of ſtamps, to whom ſuch "money ſhall be paid as aforeſaid, ſhall make an allowance "of one ſhilling in the pound to ſuch clerk of the courſe, "book-keeper, or other perſon as aforeſaid, for all monies "ſo accounted for and paid by him to ſuch diſtributor as "aforeſaid."

Neighbouring juſtice.

† *Sect.* 75. By 24. Geo. 3. c. 31. ſ. 19. it is enacted, "That it ſhall and may be lawful to and for any juſtice of "the peace reſiding near the place where the offence ſhall "be committed, to hear and determine any offence againſt "this act; which ſaid juſtice of the peace is hereby autho-"rized and required, upon any information exhibited, or "complaint made in that behalf, to ſummon the party "accuſed, and alſo the witneſſes on either ſide, and ſhall "examine into the matter of fact; and upon due proof "made thereof, either by the voluntary confeſſion of the "party, or by the oath of one or more credible witneſs or "witneſſes, to give judgment or ſentence for the penalty or "forfeiture, according as in and by this act is directed, and "to award and iſſue out his warrants, under his hand and "ſeal, for the levying any pecuniary penalties or forfeitures "ſo adjudged on the goods of the offender, and to cauſe "ſale to be made thereof, in caſe they ſhall not be redeemed "within ſix days, rendering to the party the overplus "(if any); and where the goods of ſuch offender cannot
Penalties. "be found ſufficient to anſwer the penalty, to commit ſuch "offender to priſon, there to remain for the ſpace of three "months, unleſs ſuch pecuniary penalty ſhall be ſooner "paid and ſatisfied: and if any perſon or perſons ſhall find "himſelf or themſelves aggrieved by the judgment of any "ſuch juſtice, then he or they ſhall and may, upon giving "ſecurity to the amount of the value of ſuch penalty and "forfeiture, together with ſuch coſts as ſhall be awarded in
Appeal. "caſe ſuch judgment ſhall be affirmed, appeal to the juſtices "of the peace at the next general quarter-ſeſſions for the "county, riding, or place, who are hereby impowered to "ſummon and examine witneſſes upon oath, and finally to "hear and determine the ſame; and in caſe the judgment "of ſuch juſtice ſhall be affirmed, it ſhall be lawful for ſuch "juſtices to award the perſon or perſons to pay coſts occa-"ſioned by ſuch appeal, as to them ſhall ſeem meet."

Witneſſes ſhall, on default, forfeit 40s.

† *Sect.* 76. By 24. Geo. 3. c. 31. ſ. 20. it is further enacted, "That if any perſon or perſons ſhall be ſum-"moned as a witneſs or witneſſes, to give evidence before "ſuch juſtice or juſtices of the peace, touching any of the "matters relative to this act, either on the part of the pro-"ſecutor,

" ſecutor, or of the perſon or perſons accuſed, and ſhall " neglect or refuſe to appear at the time and place to be for " that purpoſe appointed, without a reaſonable excuſe for " ſuch his, her, or their neglect or refuſal, to be allowed of " by ſuch juſtice or juſtices of the peace before whom the " proſecution ſhall be depending; that then every ſuch " perſon ſhall forfeit for every ſuch offence, the ſum of " forty ſhillings, to be levied and paid in ſuch manner, and " by ſuch means, as are hereinbefore directed as to other " penalties."

† *Sect.* 77. By 24. Geo. 3. c. 31. ſ. 21. " Provided " nevertheleſs, that it ſhall and may be lawful to and for the " ſaid juſtice, where he ſhall ſee cauſe, to mitigate and leſſen " any ſuch penalties as he ſhall think fit, reaſonable coſts and " charges of the officers and informers, as well in making " the diſcovery as in proſecuting the ſame, being always " allowed, over and above ſuch mitigation, and ſo as ſuch " mitigation do not reduce the penalties to leſs than a " moiety of the penalties incurred, over and above the ſaid " coſts and charges; any thing contained in this act, or any " other act of parliament, to the contrary notwithſtanding." Juſtice may mitigate.

† *Sect.* 78. It is ſettled, that if an agreement be made that each party ſhall ſtart his horſe, and that if either ſhall refuſe or neglect he ſhall forfeit and pay *twenty-five pounds* to the other, the one party to pay the other *five pounds* beforehand, as a conſideration to induce him to make the match, and the other refuſe to run the match, that this is not a match for leſs than fifty pounds. Bedmeade *v.* Gale, 4 Burr. 2433.

† *Sect.* 79. And as all *horſe-races* except thoſe which are conformable to theſe ſtatutes are illegal, a wager on a horſe-race not authorized cannot, of courſe, be recovered. Johnſton *v.* Bann, 4 Term Rep. 1.

As to THE FIFTH POINT, *viz.* The offence of gaming, by means of lotteries, cards, dice, &c.

† *Sect.* 80. By 10. and 11. Will. 3. c. 17. ſ. 1. IT IS RECITED, " That whereas ſeveral evil-diſpoſed perſons, for divers years laſt paſt, have ſet up many miſchievous and unlawful games, called *lotteries*, not only in the cities of *London* and *Weſtminſter*, and in the ſuburbs thereof, and places adjoining, but in moſt of the eminent towns and places in *England*, and in the dominion of *Wales*, and have thereby moſt unjuſtly and fraudulently got to themſelves great ſums of money from the children and ſervants of ſeveral gentlemen, traders, and merchants, and from other unwary perſons, to the utter ruin and impoveriſhment of many

many families, and to the reproach of the *Engliſh* laws and government, by colour of ſeveral patents or grants under the great ſeal of *England* for the ſaid lotteries, or ſome of them; which ſaid grants or patents are againſt the common good, trade, welfare, and peace, of his majeſty's kingdoms:" for remedy whereof it is enacted, "That all ſuch lotteries, "and all other lotteries, are common and publick nuiſances, "and that all grants, patents, and licences for ſuch lotte- "ries, or any other lotteries, are void and againſt law."

Lotteries declared publick nuiſances, and all grants thereof void.

From 29. Dec. 1699. no perſon to keep open ſuch lottery, &c. Penalty on offender.

† *Sect.* 81. By 10. and 11. Will. 3. c. 17. ſ. 2. it is further enacted, "That no perſon or perſons whatſoever ſhall "publickly or privately exerciſe, keep open, ſhew, or ex- "poſe to be played at, drawn at, or thrown at, or ſhall draw, "play, or throw at any ſuch lottery, or any other lottery, "either by dice, lots, cards, balls, or any other numbers or "figures, or any other way whatſoever; and that every "perſon or perſons that ſhall exerciſe, expoſe, open, or "ſhew to be played, thrown, or drawn at, any ſuch lottery, "play, or device, or other lottery, ſhall forfeit for every "ſuch offence the ſum of five hundred pounds, to be reco- "vered by information, bill, plaint, or action at law, in "any of his majeſty's courts at *Weſtminſter*, wherein no "eſſoin, wager of law, nor any more than one imparlance, "ſhall be allowed; one third part thereof to the uſe of his "majeſty, his heirs and ſucceſſors, one other third part "thereof to the uſe of the poor of the pariſh where ſuch "offence ſhall be committed, and the other third part "thereof, together with double coſts, to the party that ſhall "inform and ſue for the ſame; and the ſaid parties ſo "offending ſhall likewiſe be proſecuted as common rogues, "according to the ſtatutes in that caſe made and provided."

Penalty on playing at ſuch lotteries. 12. Geo. 2. c. 28.

† *Sect.* 82. By 10. and 11. Will. 3. c. 17. ſ. 3. it is further enacted, "That every perſon or perſons that ſhall "play, throw, or draw at any ſuch lottery, play, or device, "or other lotteries, ſhall forfeit for every ſuch offence the "ſum of twenty pounds, to be recovered by information, "bill, plaint, or action at law, in any of his majeſty's "courts at *Weſtminſter*, wherein no eſſoin, wager of law, "nor any more than one imparlance, ſhall be allowed; one "third part thereof to the uſe of his majeſty, his heirs, and "ſucceſſors, one other third part thereof to the uſe of the "poor of the pariſh where ſuch offence ſhall be committed, "and the other third part thereof, together with double "coſts, to the party that ſhall inform and ſue for the "ſame."

† *Sect.*

† *Sect.* 83. By 9. Ann. c. 6. ſ. 56. it is further enacted, "That the juſtices of the peace, and all mayors, bailiffs, "head officers, conſtables, and other her majeſty's civil "officers, within their reſpective juriſdictions, are hereby "impowered and required to uſe their utmoſt endeavours "to prevent the drawing of any ſuch unlawful lottery, "heretofore or hereafter to be ſet up, by all lawful ways "and means; and that every perſon who ſhall ſet up, "or ſhall, by writing or printing, publiſh the ſetting up "any ſuch unlawful lottery, with intent to have ſuch "lottery drawn, ſhall forfeit for every ſuch offence one "hundred pounds, to be recovered by information, bill, "plaint, or action at law, in any of her majeſty's courts at "*Weſtminſter*, wherein no eſſoin, wager of law, nor any "more than one imparlance, ſhall be allowed; one third "part thereof to the uſe of her majeſty, her heirs, and ſuc-"ceſſors; one other third part thereof to the uſe of the "poor of the pariſh where ſuch offence ſhall be com-"mitted; and the other third part thereof, together with "full coſts, to the party who ſhall inform and ſue for the "ſame." Perſons ſetting up ſuch lotteries forfeit 100l.

† *Sect.* 84. By 10. Ann. c. 26. ſ. 109. it is enacted, "That every perſon or perſons who ſhall erect, ſet up, "or keep any office or place, for making inſurances on "marriages, births, chriſtenings, or ſervice, or any of "them, or any other office or place, under the denomi-"nation of ſales of gloves, of fans, of cards, of num-"bers, of the queen's picture, for the improvement of "ſmall ſums of money, or the like offices or places, under "the pretence of improving ſmall ſums of money, ſhall "forfeit for every ſuch offence the ſum of five hundred "pounds, to be recovered, with coſts of ſuit, by action "of debt, bill, plaint, or information, in any of her ma-"jeſty's courts aforeſaid, wherein no eſſoin, protection, "wager of law, nor any more than one imparlance, ſhall "be allowed; one third part thereof to the uſe of her "majeſty, her heirs, and ſucceſſors, one other third part "thereof to the uſe of the poor of the pariſh of the "place where the offence ſhall be committed, and the "other third part thereof, together with full coſts of ſuit, "to the perſon or perſons who ſhall inform or ſue for "the ſame: and every printer or other perſon who ſhall, "by writing or printing, publiſh the ſetting up or keeping "any ſuch office or place under any the denominations "aforeſaid, or like denominations, for the improvement "of ſmall ſums of money, ſhall, for every ſuch offence, "forfeit the ſum of one hundred pounds, to be reco-

"vered

" vered and distributed in such manner as the penalty " last-mentioned is to be recovered and distributed; and " every person or persons who in any office or place " erected or set up for making insurances on marriages, " births, christenings, or service, or under any other the " denominations aforesaid, or any like denominations, for " improvement of small sums, shall make or suffer to " be made therein any new insurances or contracts for " new insurances on marriages, births, christenings, or " service, or receive any payments into any the offices or " places aforesaid, for improvement of small sums of mo- " ney, shall forfeit, for every such offence, the sum of one " hundred pounds, to be recovered and distributed in like " manner."

† *Sect.* 85. By 8. Geo. 1. c. 2. s. 36. it is enacted,

Persons who shall erect offices for sale, &c. by way of lottery, &c. shall forfeit 500l. one third to the crown, another to the informer, and the other to the poor where, &c.

" That all and every person or person who shall erect, " set up, continue, or keep, or shall cause or procure " to be erected, set up, continued, or kept, any office or " place under the denomination of sales of houses, lands, " advowsons, presentations to livings, plate, jewels, ships, " goods, or other things, for the improvement of small " sums of money; or shall sell or expose to sale any " houses, lands, advowsons, presentations to livings, plate, " jewels, ships, goods, or other things by way of lot- " tery, or by lots, tickets, numbers, or figures; or shall " make, print, advertise, or publish, or cause to be made, " printed, advertised, or published, proposals or schemes " for advancing small sums of money by several persons, " amounting in the whole to large sums, to be divided " among them by the chances of the prizes in some " publick lottery or lotteries, established or allowed by act " of parliament; or shall deliver out, or cause or procure " to be delivered out, tickets to the persons advancing such " sums, to entitle them to a share of the money so advanced " according to such proposals or schemes; or shall make, " print, or publish, or cause to be made, printed, or pub- " lished, any proposal or scheme of the like kind or nature, " under any denomination, name, or title whatsoever; and " shall be thereof convicted upon the oath or oaths of one " or more credible witness or witnesses, by two or more " justices of the peace for the county, division, or liberty " where such offence shall be committed, or the offender " shall be found (which oath such justices of the peace are " hereby impowered and required to administer), the person " so convicted shall, for every such offence, over and above " any former penalties inflicted by any former act or acts " of parliament made against any private or unlawful lot-

" teries,

" teries, forfeit the ſum of five hundred pounds; one third " part thereof to his majeſty, his heirs and ſucceſſors, one " other third part thereof to the informer, and the remain- " ing third part thereof to the poor of the pariſh where ſuch " offence ſhall be committed; the ſame to be levied by diſ- " treſs and ſale of the offender's goods, by warrant under " the hands and ſeals of ſuch juſtices before whom ſuch " offender ſhall be convicted as aforeſaid; and ſhall alſo, " for every ſuch offence, by ſuch juſtices be committed to " the county gaol, there to remain without bail or main- " prize for the ſpace of one whole year, and from thence " till the ſaid ſum of five hundred pounds, ſo forfeited as " aforeſaid, ſhall be fully paid and ſatisfied: provided never- " theleſs, that any perſon who ſhall think himſelf or herſelf " aggrieved by the judgment or determination of two or " more ſuch juſtices, in any the caſes aforeſaid, ſhall have " liberty to appeal to the next quarter-ſeſſions to be held " for the county, city, or place, where ſuch judgment or " determination ſhall be made or given; and that the judg- " ment to be given by the juſtices at the ſaid next quarter- " ſeſſions ſhall be final."

Perſons aggrieved may appeal to quarter-ſeſſions.

† *Sect.* 86. By 8. Geo. 1. c. 2. ſ. 37. it is further enacted, " That all and every perſon or perſons who, after the time " aforeſaid, ſhall be adventurer or adventurers in, or ſhall " pay any money or other conſideration, or any ways con- " tribute unto, or upon the account of any ſuch ſales, lot- " teries, propoſals, or ſchemes aforeſaid, ſhall forfeit for " every ſuch offence double the ſum paid or contributed, " to be recovered with coſts of ſuit by action of debt, bill, " plaint, or information, in any of his majeſty's courts of " record at *Weſtminſter*, wherein no eſſoin, protection, wager " of law, nor any more than one imparlance, ſhall be al- " lowed; one moiety thereof to his majeſty, his heirs, and " ſucceſſors, the other moiety thereof to the perſon or per- " ſons who ſhall inform or ſue for the ſame."

Perſons contributing to ſales, &c. to forfeit double the ſum contributed, one moiety to the crown, the other to the informer.

† *Sect.* 87. By 9. Geo. 1. c. 19. ſ. 4. it is further enacted, " That if any perſon or perſons ſhall, by vir- " tue or colour of any grant or authority from any fo- " reign prince, ſtate, or government whatſoever, erect, " ſet up, continue, or keep, or ſhall cauſe or procure to " be erected, ſet up, continued, or kept, any lottery or " undertaking in the nature of a lottery, under any deno- " mination whatſoever, or ſhall make, print, or publiſh, or " cauſe to be made, printed, or publiſhed, any propoſal or " ſcheme for any ſuch lottery or undertaking, or ſhall " within this kingdom ſell or diſpoſe of any ticket or " tickets

Clauſe to prevent foreign lotteries being carried on in this kingdom.

" tickets in any foreign lottery, and ſhall be convicted of " any the ſaid offences, upon the oath or oaths of one or " more credible witneſs or witneſſes, by two or more " juſtices of the peace of the county, diviſion, or liberty " where ſuch offence ſhall be committed, or the offender " ſhall be found (which oath ſuch juſtices of the peace are " hereby impowered and required to adminiſter), the perſon " ſo convicted ſhall, for every ſuch offence (over and above " any former penalties inflicted by any former act or acts of " parliament made againſt unlawful lotteries), forfeit the
Penalty. " ſum of two hundred pounds; one third part thereof to " his majeſty, his heirs, and ſucceſſors, one other third part " thereof to the informer, and the remaining third part " thereof to the poor of the pariſh where ſuch offence ſhall " be committed; the ſame to be levied by diſtreſs and ſale " of the offender's goods, by warrant under the hands and " ſeals of ſuch juſtices before whom ſuch offender ſhall be " convicted as aforeſaid, and ſhall alſo for every ſuch offence " by ſuch juſtices be committed to the county gaol, there to " remain without bail or mainprize for the ſpace of one " whole year, and from thence till the ſaid ſum of two " hundred pounds, ſo forfeited as aforeſaid, ſhall be fully " paid and ſatisfied."

† *Sect.* 88. By 9. Geo. 1. c. 19. ſ. 5. " Provided never- " theleſs, that any perſon who ſhall think him or herſelf " aggrieved by the judgment or determination of ſuch juſ-
Appeal to quarter-ſeſſions. " tices in any the caſes aforeſaid, ſhall have liberty to appeal " to the next quarter-ſeſſions to be held for the county, " city, or place, where ſuch judgment or determination " ſhall be made or given, and that the judgment to be " given by the juſtices of the next quarter-ſeſſions ſhall be " final."

100l. penalty on perſons ſelling or procuring chances in foreign lotteries after 24 June 1733. † *Sect.* 89. By 6. Geo. 2. c. 35. ſ. 29. " If any perſon " or perſons ſhall ſell, procure, or deliver any ticket, receipt, " chance, or number, in or belonging to any foreign lot- " tery or pretended foreign lottery, or in or belonging to " any claſs, part, or diviſion of ſuch lottery, or pretended " lottery, or in or belonging to any undertaking whatſo- " ever in the nature of a lottery, or ſhall ſell, procure, or " deliver any ticket, receipt, chance, or number in or " belonging to any duplicate or pretended duplicate of any " foreign lottery or pretended foreign lottery, or ſhall re- " ceive, or cauſe to be received, any money whatſoever for " any ſuch ticket, receipt, chance, or number, or for or in " conſideration of any money to be repaid, in caſe any

" ticket

" ticket or tickets, number or numbers in any foreign lot-
" tery or pretended foreign lottery, or any claſs, part, or
" diviſion thereof, ſhall prove fortunate, and ſhall be con-
" victed of any of the ſaid offences, upon action of debt,
" bill, plaint, or information, in any of his majeſty's courts
" of record at *Weſtminſter* (in which no eſſoin, privilege,
" protection, or wager of law, or more than one imparlance,
" ſhall be allowed), or upon the oath or oaths, or affir-
" mation or affirmations, of one or more credible witneſs
" or witneſſes, before two or more juſtices of the peace of
" the county, diviſion, or liberty, where ſuch offence ſhall
" be committed, or the offender ſhall be found (which oath
" or affirmation ſuch juſtices of the peace are hereby im-
" powered and required to adminiſter or give), the perſon ſo
" convicted ſhall, for every ſuch offence, forfeit the ſum of
" two hundred pounds; one third part thereof to the uſe of
" his majeſty, his heirs, and ſucceſſors, one third part thereof
" to him, her, or them who ſhall ſue for the ſame, or make
" information of the offence, and the remaining third part
" thereof to the poor of the pariſh where ſuch offence ſhall
" be committed; the ſame (in caſe of conviction before two
" juſtices) to be levied by diſtreſs and ſale of the offender's
" goods, by warrant under the hands and ſeals of ſuch juſ-
" tices before whom ſuch offender ſhall be convicted; and
" ſhall alſo, for every ſuch offence, by the Court or by ſuch
" juſtices, as the caſe ſhall happen, be committed to the
" county gaol, there to remain without bail or mainprize,
" for the ſpace of one whole year, and from thence till the
" ſaid ſum of two hundred pounds ſo forfeited as aforeſaid,
" ſhall be fully paid and ſatisfied."

† *Sect.* 90. By 6. Geo. 2. c. 35. ſ. 30. " Provided never- Appeal to the
" theleſs, that any perſon who ſhall think him or herſelf quarter-
" aggrieved by the judgment or determination of ſuch juſ- ſeſſions;
" tices in any of the caſes aforeſaid, ſhall have liberty to
" appeal to the next quarter-ſeſſions to be held for the
" county, city, or place where ſuch judgment or deter-
" mination ſhall be made or given, and that the judgment whoſe deter-
" to be given by the juſtices of the next quarter-ſeſſions mination ſhall
" ſhall be final." be final.

† *Sect.* 91. By 6. Geo. 2. c. 35. ſ. 32. it is further Publick act.
enacted, " That this act ſhall be deemed and taken to be a
" publick act, of which all judges and juſtices are to take Limitation of
" notice; and if any action or ſuit ſhall be brought againſt actions.
" any perſon for what he ſhall do in purſuance of this act,
" ſuch action or ſuit ſhall be commenced within ſix months,
" and not afterwards; and ſuch perſons ſhall and may

" plead the general iſſue, and give this act and the ſpecial " matter in evidence."

† *Sect.* 92. By 12. Geo. 2. c. 28. which RECITES, " That great difficulties had ariſen upon the methods of conviction of the offenders againſt the ſaid acts of parliament," IT IS ENACTED, " That if any perſon or perſons ſhall erect, ſet " up, continue, or keep any office or place, under the de- " nomination of a ſale or ſales of houſes, lands, advow- " ſons, preſentations to livings, plate, jewels, ſhips, goods, " or other things by way of lottery, or by lots, tickets, " numbers or figures, cards or dice; or ſhall make, print, " advertiſe, or publiſh, or cauſe to be made, printed, ad- " vertiſed or publiſhed, propoſals or ſchemes for advancing " ſmall ſums of money by ſeveral perſons, amounting in " the whole to large ſums, to be divided among them by " chances of the prizes in ſome public lottery or lotteries " eſtabliſhed or allowed by act of parliament, or ſhall de- " liver out, or cauſe or procure to be delivered out, tickets " to the perſons advancing ſuch ſums, to intitle them to a " ſhare of the money ſo advanced, according to ſuch pro- " poſals or ſchemes; or ſhall expoſe to ſale any houſes, " lands, advowſons, preſentations to livings, plate, jewels, " ſhips, or other goods, by any game, method, or device " whatſoever, depending upon, or to be determined by any " lot or drawing, whether it be out of a box or wheel, or " by cards or dice, or by any machine, engine, or device " of chance of any kind whatſoever; ſuch perſon or per- " ſons, and every or either of them, ſhall, upon being " convicted thereof before any one juſtice of the peace for " any county, riding, or diviſion, or before the mayor, or " other juſtice or juſtices of the peace for any city or town " corporate, upon the oath or oaths of one or more credi- " ble witneſs or witneſſes (which ſaid oaths the ſaid juſtices " of the peace, and mayor, are hereby authorized, impow- " ered and required to adminiſter), or upon the view of " ſuch juſtice or juſtices, or the mayor, juſtice or juſtices " for any city or town corporate, or on the confeſſion of " the party or parties accuſed; ſhall forfeit and loſe the ſum " of two hundred pounds, to be levied by diſtreſs and ſale " of the offender's goods, by warrant under the hands and " ſeals of one or more juſtice or juſtices of the peace of " ſuch county, riding, diviſion, city or town, where the " offence ſhall be committed; which ſaid forfeitures, when " recovered, after deducting the reaſonable charges of ſuch " proſecution, ſhall go and be applied, one third thereof " to the informer, and the remaining two thirds to the uſe " of the poor of the pariſh where ſuch offence ſhall be com- " mitted, excepting the ſaid two thirds of ſuch forfeitures " which

200l. penalty on any offence againſt this act;

the ſame how to be levied and applied.

" which ſhall be incurred by, and recovered upon, any " perſon or perſons within the city of *Bath*, which ſaid " two thirds ſhall go and be applied to and for the uſe and " benefit of the poor reſiding within the hoſpital or infir- " mary lately erected for the benefit of poor perſons reſort- " ing to the ſaid city for the benefit of the mineral waters, " after deducting the charges of conviction as aforeſaid."

† *Sect.* 93. By 12. Geo. 2. c. 28. ſ. 2. it is enacted, Games within intent of the act.
" That the games of the ace of hearts, pharaoh, baſſet, " and hazard are, and are hereby declared to be, games or " lotteries by cards or dice within the intent and mean- " ing of the preceding ſtatutes; and that all and every " perſon or perſons who ſhall ſet up, maintain, or keep " the ſaid games of the ace of hearts, pharaoh, baſſet, and " hazard, ſhall be ſubject and liable to all and every the " penalties and forfeitures in and by this act inflicted upon " any perſon or perſons who ſhall erect, ſet up, continue, " or keep any of the ſaid games or lotteries in this preſent " act mentioned; and ſhall be proſecuted and convicted, " and the penalties and forfeitures ſhall be ſued for and re- " covered, in like manner as the ſaid penalties and for- " feitures are by this act directed to be ſued for and reco- " vered."

† *Sect.* 94. By 12. Geo. 2. c. 28. ſ. 3. it is enacted, 50l. penalty on the adventurers.
" That all and every perſon and perſons who ſhall be ad- " venturers in any of the ſaid games, lottery or lotteries, " ſale or ſales; or ſhall play, ſet at, ſtake, or punt at either " of the ſaid games of the ace of hearts, pharaoh, baſſet, " and hazard, and ſhall be thereof convicted in ſuch " manner and form as in and by this act is preſcribed; " every ſuch perſon or perſons ſhall forfeit and loſe the " ſum of fifty pounds, to be ſued for and recovered as " aforeſaid."

† *Sect.* 95. By 12. Geo. 2. c. 28. ſ. 4. it is enacted, Sales by lotteries void;
" That all and every ſuch ſale and ſales of houſes, lands, " advowſons, preſentations to livings, plate, jewels, ſhips, " goods, or other things, by any game, lottery or lotteries, " machine, engine, or other device whatſoever, depending " upon, or to be determined by chance or lot, ſhall and " are hereby declared to be void to all intents and purpoſes " whatſoever: and all ſuch houſes, lands, advowſons, pre- and lands, &c. forfeited.
" ſentations to livings, plate, jewels, ſhips, goods, or other " things, ſet up and expoſed to ſale in manner and form " aforeſaid, ſhall be forfeited to ſuch perſon or perſons " who ſhall ſue for the ſame by action, bill, plaint, or " information, in any of his majeſty's courts of record, or

" at the aſſizes for any county where the offence ſhall be " committed; in which action, bill, plaint, or information, " no eſſoin, protection, wager of law, or more than one " imparlance ſhall be allowed."

Appeal.

† *Sect.* 96. By 12. Geo. 2. c. 28. ſ. 5. it is provided, " That if any perſon or perſons ſhall think him, her, or " themſelves aggrieved by the judgment or determination " of any juſtice or juſtices of the peace, or mayor as afore- " ſaid, upon any conviction of or for any of the offences " in this act; ſuch perſon or perſons may appeal from the " ſaid judgment of the ſaid juſtice or juſtices, or mayor, to " the next general quarter-ſeſſions of the peace for the ſaid " county, riding, diviſion, city, or place where ſuch per- " ſon or perſons was or were convicted; but the perſon " and perſons ſo appealed ſhall, and he, ſhe, and they are " hereby directed to give reaſonable notice to the proſecu- " tor or proſecutors of ſuch perſon or perſons as ſhall ſo " appeal, of ſuch his, her, or their intention of bringing " and proſecuting ſuch appeal, and ſhall enter into a re- " cognizance before ſome juſtices of the peace for the coun- " ty, riding, diviſion, city or place wherein the conviction " or judgment was made or given, with two ſufficient " ſureties, on condition to try ſuch appeal at the next " quarter-ſeſſions which ſhall be held in and for the county, " riding, diviſion, city, or place wherein ſuch conviction " or judgment was made or given, next and immediately " after the bringing ſuch appeal; and every ſuch appeal and " appeals ſhall, by the court at the ſaid next general quar- " ter-ſeſſions, to which ſuch appeal and appeals is or are " made, be then examined, and the matter then finally " heard and determined, and not afterwards; and in caſe " ſuch judgment, determination, or conviction, as afore- " ſaid, ſhall be then and there affirmed, the party appeal- " ing ſhall pay unto the proſecutor or proſecutors, his, " her, or their treble coſts; and ſuch proſecutor and pro- " ſecutors ſhall have ſuch remedy for the ſame, as any de- " fendant or defendants hath or have for coſts of ſuit in " any other caſes by law."

Convictions.

† *Sect.* 97. By 12. Geo. 2. c. 28. ſ. 6. it is provided, " That no ſuch conviction made, or judgment given as " aforeſaid by this act, ſhall be ſet aſide by the ſaid court " of quarter-ſeſſions for want of form, in caſe the facts al- " ledged in the ſaid conviction ſhall be proved to the ſa- " tisfaction of the ſaid court; nor ſhall ſuch conviction or " judgment be removed or removable by *certiorari*, or any " other writ or proceſs whatſoever, into any of his ma- " jeſty's courts of record at *Weſtminſter*, until ſuch order " or

" or other proceedings ſhall have been firſt removed to,
" and judgment and determination given and made there-
" upon, by ſuch court of quarter-ſeſſions as aforeſaid."

† *Sect.* 98. By 12. Geo. 2. c. 28. ſ. 7. it is alſo provided, Record re-
" That no writ of *certiorari*, or other proceſs, ſhall iſſue or moveable up-
" be iſſuable to remove the record of any ſuch conviction on 100l. ſecu-
" from the ſaid court of quarter-ſeſſions, or to remove rity.
" any order or other proceedings taken or made by the
" ſaid court of quarter-ſeſſions upon, touching or con-
" cerning ſuch conviction, into any of his majeſty's courts
" of record at *Weſtminſter*, until the party or parties againſt
" whom ſuch conviction ſhall be made, before the allow-
" ance of ſuch writ of *certiorari*, or other proceſs, ſhall
" find two ſufficient ſureties to become bound to the pro-
" ſecutor in the ſum of one hundred pounds, with condi-
" tion to proſecute the ſame with effect within ſix calen-
" dar months, and to pay unto the proſecutor or proſecu-
" tors his, her, or their treble coſts and charges, in caſe
" ſuch order or conviction ſhall be affirmed."

† *Sect.* 99. By 12. Geo. 2. c. 28. ſ. 8. it is enacted, Offenders not
" That if any perſon or perſons who ſhall be convicted of able to pay the
" erecting, ſetting up, maintaining, or keeping any of the penalties, to
" ſaid lotteries, or the ſaid games of the ace of hearts, pha- be impriſoned.
" raoh, baſſet, or hazard, or therein or in either of them
" ſhall adventure, and ſhall not have ſufficient goods and
" chattels whereon to levy the penalties inflicted by this
" act, or ſhall not immediately pay the ſaid penalties, or
" give ſecurity for the ſame; it ſhall and may be lawful for
" the ſaid juſtice or juſtices, before whom ſuch perſon
" ſhall be convicted as aforeſaid, to commit ſuch perſon
" or perſons to the common gaol of the county, riding,
" diviſion, city, or place where ſuch offence ſhall be com-
" mitted, there to continue and remain for any time not
" exceeding ſix months."

† *Sect.* 100. By 12. Geo. 2. c. 28. ſ. 9. it is alſo enacted, Penalty on
" That if any juſtice of the peace, or any other juſtice neglect of juſ-
" herein-before deſcribed, or mayor of any corporation, tices or may-
" ſhall neglect or refuſe to do what is required of him and ors.
" them by this act; ſuch juſtices and mayors ſo neglecting
" or refuſing ſhall reſpectively forfeit and pay the ſum of
" ten pounds for each offence; one moiety whereof to be
" paid to any perſon or perſons who ſhall ſue for the ſame,
" and the other moiety thereof to the poor of the pariſh or
" place where ſuch offence ſhall be committed; and ſhall
" be recovered with full coſts of ſuit, by action, bill,
" plaint, or information, in any of his majeſty's courts of

" record, or at the aſſizes for any county; in which action, " bill, plaint, or information, no eſſoin, protection, or " wager of law, nor more than one imparlance ſhall be " allowed; ſuch proſecution being commenced within ſix " months next after ſuch refuſal of ſuch juſtices or " mayor."

This act not to hinder any games in palaces where the king reſides;

† *Sect.* 101. By 12. Geo. 2. c. 28. ſ. 10. it is provided, " That nothing in this act, or in any former acts againſt " gaming contained, ſhall extend to prevent or hinder any " perſon or perſons from gaming or playing at any of the " games in this or in any of the ſaid former acts men- " tioned within any of his majeſty's royal palaces, where " his majeſty, his heirs or ſucceſſors ſhall then reſide."

nor to affect the right to any lands &c. held by lot.

† *Sect.* 102. By 12. Geo. 2. c. 28. ſ. 11. it is alſo pro- vided, " That nothing herein contained ſhall extend, or " be any ways conſtrued, deemed, or taken to extend, or " in any ſort to affect or prejudice any eſtate or intereſt " in, out of, or to any manors, honours, royalties, lands, " tenements, advowſons, preſentations, rents, ſervices, and " hereditaments whatſoever, which ſhall or may at any " time or times hereafter be according to the laws now in " being legally allotted to, or held by, or by means of " any allotment or partition by lots; but that all perſons " who now are, or that ſhall hereafter become, really and " truly ſeiſed as part-owners, joint-tenants, and tenants " in common of any manors, honours, royalties, lands, " tenements, advowſons, preſentations, rents, ſervices, and " hereditaments, ſhall, and he, ſhe, and they, and his, " her, and their heirs and aſſigns is, and are hereby made " and continued capable to accept and take ſuch eſtates " and intereſt, and parts therein, in ſuch and the like " manner, and to ſuch and the like uſes, as he, ſhe, or " they might, would, or could, have done by, or by vir- " tue, or in conſequence of any lot, ſcroll, chance or al- " lotment whatſoever, had this preſent act never been " made; any thing herein contained to the contrary thereof " notwithſtanding."

Limitation of actions.

† *Sect.* 103. By 12. Geo. 2. c. 28. ſ. 12. it is further enacted, " That if any ſuit or action ſhall be commenced " or proſecuted againſt any perſon or perſons for any thing " done in purſuance of this act, every ſuch ſuit or action " ſhall be commenced within three calendar months next " after the fact was committed, and not afterwards; and " ſhall be laid or brought in the county, city, or place " where the cauſe of action ſhall ariſe, and not elſewhere; " and the defendant and defendants therein ſhall and may " plead

" plead the general iſſue, and give this act and the ſpecial " matter in evidence at the trial to be had thereupon, and " that the ſame was done in purſuance of, or by the au- " thority of this act; and if the plaintiff or plaintiffs ſhall " become nonſuited, or diſcontinue his, her, or their ac- " tion or actions, ſuit or ſuits, or if upon demurrer judg- " ment ſhall be given againſt the plaintiff or plaintiffs; the " defendant or defendants ſhall and may recover treble coſts, " and have like remedy for the ſame, as any defendant or " defendants hath or have for coſts in any other caſes by " law." General iſſue. Treble coſts.

† *Sect.* 104. By 13. Geo. 2. c. 19. ſ. 9. IT IS RECITED, " That whereas a good and wholeſome law was made in 12. Geo. 2. for the more effectual preventing exceſſive and deceitful gaming; but, contrary to the true intent and meaning thereof, ſome fraudulent and deceitful games have been invented, and a certain game called paſſage is now daily practiſed and carried on, to the ruin and impoveriſhment of many of his majeſty's ſubjects;" it is therefore ENACTED, " That the ſaid game of paſſage, and all and every other " game and games invented, or to be invented, with one " or more die or dice, or with any other inſtrument, en- " gine, or device, in the nature of dice, having one or " more figures or numbers thereon (backgammon and the " other games now played with the backgammon tables " only excepted), are and ſhall be deemed to be games or " lotteries by dice, within the intent and meaning of the " preceding ſtatute; and all and every perſon and per- " ſons who ſhall ſet up, maintain, or keep any office, " table, or place (ſave and except as in the preceding " ſtatute is provided and declared), for the ſaid game of " paſſage, or for any other ſuch game or games as afore- " ſaid (backgammon and the other games now played with " the backgammon tables only excepted), ſhall ſeverally " forfeit, be ſubject and liable to, all and every the penal- " ties and forfeitures in and by the preceding ſtatute in- " flicted upon any perſon or perſons who ſhall erect, ſet " up, continue, or keep any of the games or lotteries " in the preceding ſtatute mentioned; and all and every " perſon or perſons who ſhall play, ſet at, ſtake, or " adventure at the ſaid game of paſſage, or at any other " ſuch game, as aforeſaid (backgammon and the other " games now played with the backgammon tables only " excepted), ſave and except as in the preceding ſtatute " is provided and declared, he and they reſpectively " ſhall ſeverally forfeit, be ſubject and liable to all and " every the penalties and forfeitures in and by the pre- " ceding ſtatute inflicted upon any perſon or perſons " who 12. Geo. 2. c. 28. Game of paſſage, and other games with dice, prohibited. See farther, 29. Geo. 2. c. 7.

" who ſhall play, ſet at, ſtake, or adventure at any of the " ſaid games in the preceding ſtatute mentioned; and " all and every ſuch offenders reſpectively ſhall be proſe- " cuted and convicted, and the ſeveral penalties and forfei- " tures ſhall be ſued for and recovered and diſpoſed of " in like manner, and to ſuch uſes as the ſeveral penal- " ties and forfeitures in either of ſuch caſes are by the " preceding ſtatute directed to be ſued for, and recovered, " and diſpoſed of.

† *Sect.* 105. By 13. Geo. 2. c. 19 ſ. 10. it is further enacted, " That in any action, bill, plaint, or information " to be brought or commenced by virtue of this act, no eſ- " ſoin, protection, wager of law, or more than one im- Double coſts. " parlance, ſhall be allowed; and that over and above the " penalties and forfeitures to be recovered by virtue of this " act, the plaintiff or informer ſhall recover his or her " double coſts."

No perſon ſhall keep a place for playing roly-poly, or other game with cards or dice.

† *Sect.* 106. By 18. Geo. 2. c. 34. ſ. 1. IT IS RECITED, " That whereas, notwithſtanding the many good and wholeſome laws now in being for preventing exceſſive and deceitful gaming, many perſons of ill fame and reputation, who have no viſible means of ſubſiſtence, do keep houſes, rooms, and other places for playing, and do permit perſons therein to play at cards, dice, and other devices, for large ſums of money, by means whereof divers young and unwary perſons, and others, are drawn in to loſe the greateſt part, and ſometimes all their ſubſtance; and it frequently happens they are thereby reduced to the utmoſt neceſſities, and betake themſelves to the moſt wicked courſes, which end in their utter ruin: and whereas a certain pernicious game called roulet, or roly-poly, is daily practiſed, and the laws now in being have, by experience, been found ineffectual to put a ſtop to ſuch pernicious practices:" it is therefore ENACTED, " That no perſon or perſons, of what " condition ſoever, ſhall keep any houſe, room, or place " for playing, or permit or ſuffer any perſon or perſons " whatſoever, within any ſuch houſe, room, or place, to " play at the ſaid game of roulet, otherwiſe roly-poly, or " at any other game, with cards or dice, already prohibited " by the laws of this realm; and in caſe any perſon or per- " ſons whatſoever ſhall keep any ſuch houſe, room, or " place for playing, or permit or ſuffer any perſon or per- " ſons as aforeſaid to play at the ſaid game of roulet, other- " wiſe roly-poly, or at any other game, with cards or " dice already prohibited by law, ſuch perſon or perſons " ſo offending ſhall incur the pains and penalties, and be " liable to ſuch proſecution as is directed in and by the " ſtatute 12. Geo. 2. c. 28."

† *Sect.*

† *Sect.* 107. By 18. Geo. 2. c. 34. ſ. 2. it is enacted, "That if any perſon or perſons whatſoever ſhall play at the "ſaid game of roulet, otherwiſe roly-poly, or at any game "or games with cards or dice already prohibited by law, "every ſuch perſon or perſons ſo offending ſhall alſo in-"cur the pains and penalties, and be liable to ſuch pro-"ſecution as is directed by the ſtatute 12. Geo. 2. c. 28." Perſons playing ſhall incur the penalties of 12. Geo. 2. c. 28.

† *Sect.* 108. By 22. Geo. 3. c. 47. ſ. 1. IT IS RECITED, "That whereas all lotteries, except ſuch as are permitted by act of parliament, are contrary to law, and puniſhable under various ſtatutes of this realm: and whereas, to prevent the abuſe of ſuch lotteries as for the time being are eſtabliſhed by act of parliament, it is fit that there ſhould be a permanent regulation both of the keepers of lottery offices and of the ſale of lottery tickets: and whereas it is become a common practice in *London*, and other places of *Great Britain*, to have offices for ſelling tickets in lotteries eſtabliſhed in *Ireland* by *Iriſh* acts of parliament: and whereas it is thought expedient to allow of the ſelling ſuch *Iriſh* tickets within *Great Britain*, on the terms of having the ſale of them under the ſame regulations as are herein-after appointed for tickets in lotteries eſtabliſhed by *Britiſh* acts of parliament:" AND ENACTED, "That it ſhall be lawful to buy and ſell, within "all parts of *Great Britain* (except within the univerſities "of *Oxford* and *Cambridge*), any ticket or tickets in any "lottery or lotteries now authoriſed, or hereafter to be au-"thoriſed, by any *Iriſh* act of parliament, or any ſhare or "ſhares of any ticket or tickets in any ſuch *Iriſh* lottery or "lotteries, in the ſame manner as if ſuch *Iriſh* tickets were "tickets in a lottery eſtabliſhed by an act of the parliament "of *Great Britain*." Iriſh tickets may be ſold in the ſame manner as Britiſh tickets.

† *Sect.* 109. By 22. Geo. 3. c. 47. ſ. 2. "No perſon or "perſons ſhall, publicly or privately, open, ſet up, exerciſe, "or keep, by himſelf or herſelf, or any other perſon or per-"ſons, any office for buying, ſelling, or otherwiſe dealing "in any tickets, or for regiſtering the numbers of any "tickets in the lottery authoriſed by any act of the preſent "ſeſſion of parliament, or in any lottery which ſhall be "authoriſed by any future act of parliament; or in any "lottery now eſtabliſhed, or hereafter to be eſtabliſhed, by "any *Iriſh* act of parliament; or ſhall, by writing, print-"ing, or otherwiſe, publiſh the ſetting up or uſing any "ſuch office, without firſt taking out a licence for that "purpoſe from the commiſſioners for managing the duties "upon ſtamped vellum, parchment, and paper, for the time "being, in manner herein-after mentioned." No perſon to keep a lottery office without taking out a licence from the ſtamp office.

† *Sect.*

Each licence to cost 50l

† *Sect.* 110. By 22. Geo. 3. c. 47. ſ. 3. "The ſaid commiſſioners, or any three of them, are hereby empowered "and required, by writing under their hands and ſeals, to "grant a licence for an office for ſelling and dealing in lottery tickets authoriſed by law, to all and every perſon and "perſons applying for the ſame; but, previouſly to the delivery of any ſuch licence, and before it ſhall have any "effect, there ſhall be paid, over and above all other payments to which the perſon or perſons taking out ſuch licence may be reſpectively liable by any other act of parliament, whether as brokers or otherwiſe, the ſum of fifty "pounds for every ſuch licence, at the ſtamp office, at the "time ſuch licence ſhall be delivered to the perſon or perſons applying for the ſame; and every ſuch ſum of fifty "pounds ſhall be applied towards defraying the expences of "the ſtamp office in executing this act, and otherwiſe in "manner herein-after preſcribed."

Licence to ſet forth the name of the perſon taking out the ſame, &c. and to continue in force for one year.

† *Sect.* 111. By 22. Geo. 3. c. 47. ſ. 4. "Every ſuch licence ſhall ſet forth the true name and place of abode of "the perſon or perſons taking out the ſame, and alſo the "particular houſe or place where ſuch buſineſs of dealing "in lottery tickets ſhall be carried on; and ſuch licence "ſhall continue in force for twelve calendar months from "the date thereof, and no longer; and every perſon acting "or dealing in any of the matters therein contained after "the expiration of ſuch licence, without the authority of a "new licence, to be taken out in the ſame manner, ſhall "be conſidered in every reſpect as an unlicenſed perſon."

No licence to be granted for any office in *Oxford* or *Cambridge*.

† *Sect.* 112. But by 22. Geo. 3. c. 47. ſ. 5. it is provided, "That no licence ſhall be granted for having any "ſuch lottery office as aforeſaid within the univerſities of "*Oxford* and *Cambridge*, or either of them; and if any licence ſhall be granted for any ſuch lottery office within "either of the ſaid univerſities, it ſhall be void and of no "effect, and the perſon or perſons acting under ſuch licence ſhall be liable to the ſame penalty as an unlicenſed "perſon."

Perſons keeping any office contrary to this act, to forfeit 100l.

† *Sect.* 113. By 22. Geo. 3. c. 47. ſ. 6. it is further enacted, "That all and every perſon and perſons who ſhall "open, ſet up, or keep, any office for buying, ſelling, or "otherwiſe dealing in, ſuch lottery tickets as aforeſaid, or "any ſhares thereof, or for regiſtering the numbers of ſuch "tickets, without the authority of ſuch licence as aforeſaid, "or in any other houſe or place beſides that named in the "licence which he, ſhe, or they, ſhall have, or in any other "manner contrary to ſuch licence, or to the intent and "meaning

" meaning of this preſent act, ſhall forfeit, for every ſuch " offence, the ſum of one hundred pounds."

† *Sect.* 114. By 22. Geo. 3. c. 47. ſ. 7. " All and every " perſon and perſons to be licenſed under this act, ſhall " cauſe the words, *Licenſed to deal in lottery tickets*, to be " written or expreſſed, in legible characters, upon or near " the door in the front of his, her, or their office, ſhop, or " other place for ſelling of tickets, to denote that ſuch per- " ſon or perſons is or are a dealer or dealers in lottery tickets, " and liable to take out a licence; and if any perſon or " perſons ſhall preſume to ſell or deal in ſuch lottery tickets " as aforeſaid without complying with the ſaid proviſion, " he, ſhe, or they, ſo offending, ſhall, for every day in " which ſuch offence ſhall be committed, forfeit and pay " the ſum of twenty pounds." Certain words to be written on the front of each licenſed office.

† *Sect.* 115. By 22. Geo. 3. c. 47. ſ. 8. " If any perſon " or perſons whatſoever ſhall forge or counterfeit, or cauſe " to be forged or counterfeited, or aſſiſt in forging or coun- " terfeiting, any licence authoriſed to be made by this act " for the purpoſe aforeſaid, or ſhall fraudulently alter, or " cauſe to be altered, or aſſiſt in altering, any ſuch licence " as ſhall be really granted under this act, or ſhall know- " ingly make uſe of any ſuch forged, counterfeited, or al- " tered licence, ſuch perſon or perſons ſhall, for every ſuch " offence, forfeit the ſum of five hundred pounds, one " moiety thereof to his majeſty, his heirs and ſucceſſors, " and the other moiety to him that ſhall proſecute or ſue " for the ſame, to be recovered by action of debt, bill, plaint, " or information, in any of his majeſty's courts of record at " *Weſtminſter*, in which no eſſoin, protection, wager of law, " or more than one imparlance, ſhall be allowed; and ſhall " alſo be ſubject to impriſonment for ſuch term, not ex- " ceeding ſix months, as the court in which the party of- " fending ſhall be convicted ſhall appoint." Penalty on forging or altering any licence.

† *Sect.* 116. But by 22. Geo. 3. c. 47. ſ. 9. it is pro- vided, " That all and every the perſon and perſons to whom " any ſuch licence as aforeſaid ſhall be granted, ſhall, at the " time of receiving ſuch licence, give ſecurity by bond to " his majeſty, his heirs and ſucceſſors, in the ſum of one " thouſand pounds, with two or more ſufficient ſureties, " to be approved of by the ſaid commiſſioners, or any three " or more of them; of which bond the condition ſhall be, " that if ſuch perſon or perſons ſhall well and truly con- " form and obſerve all the regulations and proviſions of " this act, ſo far as he, ſhe, or they, ſhall be concerned " therein, ſuch bond ſhall be void, but otherwiſe to be and " remain All perſons taking out licences are to give bond to his majeſty.

" remain in full force; and the ſaid commiſſioners, or any " three or more of them, are hereby authoriſed to take the " ſaid bond; and if, at the end of the year for which any " ſuch licence ſhall be granted, it ſhall appear, to the ſatis- " faction of the ſaid commiſſioners, or any three or more " of them, that the perſon or perſons entering into any ſuch " bond hath or have acted in conformity to the directions " and proviſions of this act, during the year for which the " licence ſhall be granted, then the ſaid commiſſioners, or " any three or more of them, are hereby authoriſed to cauſe " ſuch bond to be delivered up and cancelled: but other- " wiſe the ſaid commiſſioners ſhall (unleſs they ſhall ſee " ſufficient reaſon to forbear from proſecution) cauſe every " ſuch bond to be proſecuted."

Licenſed perſons convicted of any offence againſt this act, ſhall forfeit their licence, &c.

† *Sect.* 117. And by 22. Geo. 3. c. 47. ſ. 10. it is alſo provided, " That if any perſon or perſons, to whom any " ſuch licence as aforeſaid ſhall be granted, ſhall be con- " victed of any offence againſt this act, whether on proſe- " cution of the bond to be given in manner aforeſaid, or " on proſecution for any penalty whatever under this act, " ſuch conviction ſhall operate as a forfeiture of ſuch li- " cence, and from thenceforth the ſame ſhall be void; and " the ſaid commiſſioners may, if they think fit, refuſe to " grant to the perſon or perſons ſo convicted a licence in " future."

No buſineſs to be tranſacted before eight in the morning, nor after eight in the evening.

† *Sect.* 118. By 22. Geo. 3. c. 47. ſ. 11. it is further enacted, " That no ſuch office for lottery tickets, and ſo to " be licenſed as aforeſaid, ſhall be open for the tranſaction " of any buſineſs, under ſuch licence, before the hour of " eight of the clock in the morning, nor after the hour of " eight of the clock in the evening, except on the evening " of the *Saturday* preceding the drawing of any lottery; " and if any ſuch office or place ſhall be wilfully kept open, " in point of time, contrary to this act, the perſon or per- " ſons licenſed to keep ſuch office ſhall, for every ſuch of- " fence, forfeit fifty pounds."

Penalty on ſelling any ſhare leſs than a ſixteenth.

† *Sect.* 119. By 22. Geo. 3. c. 47. ſ. 12. after reciting, " that the dividing of tickets in a lottery into very ſmall ſhares has been found miſchievous," it is further enacted, " That if any perſon or perſons ſo to be licenſed as afore- " ſaid, ſhall ſell any ſmaller ſhare or ſhares of any ticket or " tickets, in any lottery, than a ſixteenth, or publiſh any " propoſals for ſelling any ſmaller ſhare or ſhares, every " ſuch perſon ſhall, for every offence in ſo doing, forfeit " the ſum of fifty pounds; and further, the contract on " every

" every ſuch ſale of a ſmaller ſhare than a ſixteenth ſhall be " void in law."

† *Sect.* 120. By 22. Geo. 3. c. 47. ſ. 13. " in order to prevent all adventuring with lottery tickets in any ſuch lottery as aforeſaid, other than ſuch as ſhall neceſſarily ariſe from the real and actual ſale of ſuch tickets, and of ſuch ſhares thereof as are hereby permitted," it is further enacted, " That it ſhall not be lawful for any perſon or perſons to " ſell the chance or chances of any ticket or tickets in any " ſuch lottery as aforeſaid, for a day, or any leſs time than " the whole time of drawing in any ſuch lottery, or to in- " ſure for or againſt the drawing of any ſuch ticket or " tickets, or to receive any money or goods in conſideration " of any agreement to repay any ſum or ſums, or to deliver " the ſame or other goods, if any ſuch ticket or tickets " ſhould prove fortunate or unfortunate, or on any other " chance or event relative to the drawing of any ſuch ticket " or tickets, whether as to their being drawn fortunate or " unfortunate, or the time of their being drawn, or otherwiſe " howſoever; or under any pretence, device, form, deno- " mination, or deſcription whatſoever, to promiſe or agree " to pay any ſum or ſums, or to deliver any goods, or to do " or forbear doing any thing for the benefit of any perſon " or perſons, whether with or without conſideration, on any " event or contingency relative or applicable to the drawing " of any ſuch ticket or tickets, or to publiſh any propoſal " for any of the purpoſes aforeſaid; and if any perſon or " perſons ſhall offend againſt this act in any of the matters " aforeſaid, he, ſhe, or they, ſhall, for every offence, forfeit " and pay the ſum of fifty pounds; and further, the con- " tract in every ſuch caſe ſhall be void."

Limitation of the ſale of chances, &c.

† *Sect.* 121. By 22. Geo. 3. c. 47. ſ. 14. " to prevent ſelling ſhares of tickets by any perſons except the real proprietors thereof, and ſelling ſhares of any ticket beyond the number of ſhares equal to the whole thereof," it is further enacted, " That it ſhall not be lawful for any perſon or " perſons to ſell any ſhare or ſhares of any ticket or tickets " in any ſuch lottery as aforeſaid, without being the owner " or owners of ſuch ticket or tickets at the time of ſelling " ſuch ſhare or ſhares thereof, or to ſell any ſhare of any " ticket beyond ſuch number of ſhares as, being added to- " gether, ſhall be equal to the whole of ſuch ticket; and all " and every perſon and perſons who ſhall offend againſt this " act in either of thoſe reſpects, ſhall forfeit the ſum of " fifty pounds."

Penalty on perſons ſelling ſhares of tickets not their property.

† *Sect.*

Commiſſioners to eſtabliſh an office in *London* or *Weſtminſter*, where tickets ſhall be depoſited before they are ſhared.

† *Sect.* 122. By 22. Geo. 3. c. 47. ſ. 15. "the more effectually to prevent abuſes in the ſelling of ſhares of lottery tickets," it is further enacted, "That the ſaid commiſſioners, or any three or more of them, ſhall, before the time herein-after appointed for the commencement of this act, eſtabliſh an office, in the city of *London* or *Weſtminſter*, for the depoſit of tickets intended to be ſold in ſhares; and every ticket in any ſuch lottery as aforeſaid, before it ſhall be divided into or ſold in ſhares, ſhall be brought to the ſaid office, and ſhall be there depoſited and left with the receiver-general of his majeſty's ſtamp duties, or ſome perſon or perſons to be appointed by him to receive the ſame, and who is and are hereby authoriſed and required to receive the ſame."

All agreements for ſhares to be on ſtamped paper, &c.

† *Sect.* 123. By 22. Geo. 3. c. 47. ſ. 16. "Every agreement for the ſale of a ſhare of any ſuch ticket or tickets ſo to be depoſited as aforeſaid, ſhall be expreſſed on a piece of written or printed paper, vellum, or parchment, and ſhall be impreſſed with ſome mark, device, or ſtamp, to be from time to time preſcribed by the ſaid commiſſioners, or any three or more of them, for that purpoſe; but the ſaid receiver-general, or the perſon or perſons ſo to be appointed by him, ſhall not deliver out, impreſſed with any mark, device, or ſtamp, more ſhares for any one ſuch ticket than, being added together, ſhall amount to the value of a whole ticket, nor ſhall ſo impreſs with any mark, device, or ſtamp, any ſmaller ſhare than a ſixteenth, or any ſhare of a ticket other than ſuch as is permitted by this act; and if ſuch receiver-general, or the perſon or perſons ſo to be appointed by him, ſhall deliver out any ſhare, other than ſuch as he or they are hereby authoriſed to have, impreſſed with any ſuch mark, device, or ſtamp, he or they ſhall, for every ſuch offence, forfeit fifty pounds."

Receiver-general to give a receipt for tickets brought to be ſhared.

† *Sect.* 124. By 22. Geo. 3. c. 47. ſ. 17. "The ſaid receiver-general of his majeſty's ſtamp duties, or ſuch perſon or perſons, ſo to be appointed by him to receive tickets to be divided into ſhares, ſhall, upon the receipt of any ſuch ticket, or any number of ſuch tickets as aforeſaid, give a receipt in writing for the ſame; which receipt ſhall expreſs the day of receiving the ticket or tickets, the lottery to which the ticket or tickets ſhall belong, the number or numbers of the ticket or tickets ſo received, and the name or names of the proprietor or proprietors thereof; and alſo that ſuch ticket or tickets is or are received in purſuance of this act, and doth or do accordingly remain in the hands of the ſaid receiver-general,

" ral, or ſuch perſon or perſons to be appointed by him " to receive the ſame, to be diſpoſed of as is hereby di- " rected."

† *Sect.* 125. By 22. Geo. 3. c. 47. ſ. 18. " Each and " every ſuch ticket in the ſaid lottery, ſo to be depoſited " with the ſaid receiver-general for the purpoſe of being af- " terwards ſold into ſhares, ſhall remain and continue in " the cuſtody and poſſeſſion of the ſaid receiver-general, or " of the perſon or perſons ſo to be appointed by him as " aforeſaid, until the expiration of three days after the " drawing of ſuch ticket in the ſaid lottery; and, on the " expiration of three days next after the drawing of ſuch " ticket in the ſaid lottery, ſuch ticket ſhall be returned to " the owner or owners thereof, his, her, or their agent or " agents, aſſignee or aſſignees, upon producing the receipt " of the ſaid receiver-general, or of ſuch other perſon or " perſons ſo to be appointed by him as aforeſaid, for the " ſame: and in caſe any ſuch ticket, ſo to be depoſited as " aforeſaid, ſhall remain unclaimed at the end of two years " from the day of the drawing thereof, the money (if any) " to ariſe by the ſale of ſuch ticket ſhall be retained in the " hands of the ſaid receiver-general for the time being, and " be applied in defraying the expences of the ſtamp office " in executing this act, and otherwiſe in ſuch manner as is " herein-after mentioned."

All ſuch tickets to remain in his cuſtody three days after they are drawn.

† *Sect.* 126. By 22. Geo. 3. c. 47. ſ. 19. " A book or " books ſhall be kept by the ſaid receiver-general, or the " perſon or perſons ſo to be appointed by him as aforeſaid, " who ſhall truly and fairly enter and regiſter in ſuch book " or books the number of every lottery ticket which ſhall " be depoſited in the ſaid office in purſuance of this act, to- " gether with the name or names of all and every ſuch per- " ſon and perſons who ſhall ſo depoſit ſuch ticket, and alſo " the number of ſhares into which each ſuch ticket ſhall be " ſo divided as aforeſaid; and any perſon ſhall and may, " from time to time, and at all ſeaſonable times, reſort to " and inſpect ſuch book or books, on payment of the ſum " of two-pence to the ſaid perſon or perſons ſo to be ap- " pointed by the ſaid receiver-general as aforeſaid; and the " money ariſing from ſuch payment ſhall be paid and applied " in defraying the expences of the ſtamp office in executing " this act, and otherwiſe in manner herein after ſpecially " provided."

The numbers of all tickets depoſited in the office to be entered in a book, with the names of the owners, and the number of ſhares into which they are divided.

† *Sect.* 127. By 22. Geo. 3. c. 47. ſ. 20. " Upon the " leaving and depoſiting of any lottery ticket at or in the " ſaid office, with the ſaid receiver-general, or ſuch perſon

Two-pence for each ſhare to be paid to the officer on depoſiting tickets in the office.

" or perſons ſo to be appointed as aforeſaid, for the purpoſes aforeſaid, the perſon or perſons who ſhall ſo leave and depoſit the ſame ſhall pay to the ſaid receiver-general, or the perſon or perſons ſo to be appointed by him as aforeſaid, for each ſhare into which every ſuch ticket ſhall be divided by the ſaid officer or officers, the ſum of two-pence; and the monies ariſing from ſuch fee, to be paid as aforeſaid, ſhall be accounted for, from time to time, and ſhall be paid and applied towards the expence of keeping ſuch office for the depoſit of lottery tickets as aforeſaid, or in defraying any other expences of the ſtamp office in the execution of this act, and otherwiſe in ſuch manner as is herein-after ſpecially preſcribed."

Penalty on ſelling any ſhare of a ticket without a ſtamp.

† *Sect.* 128. By 22. Geo. 3. c. 47. ſ. 21. " If any perſon or perſons ſhall, at any time or times, ſell, or agree to ſell, any ſhare or ſhares of any ticket or tickets in any ſuch lottery as aforeſaid, otherwiſe than by a written or printed agreement, on a piece of paper, vellum, or parchment, ſtamped and marked by ſuch officer or officers, and in ſuch manner as by this act is before preſcribed, he, ſhe, or they, ſo offending, ſhall, for every ſuch offence, forfeit the ſum of fifty pounds."

Penalty on forging or altering receipts, or uſing the ſame with a fraudulent intention.

† *Sect.* 129. By 22. Geo. 3. c. 47. ſ. 22. " If any perſon or perſons ſhall forge or counterfeit, or cauſe to be forged or counterfeited, or aſſiſt in forging or counterfeiting, any ſuch receipt as is by this act required to be given on depoſit of any ticket or tickets to be divided in ſhares, or any ſtamp or mark by this act required to be put on any ſhare or ſhares of any ticket or tickets; or ſhall alter, or cauſe to be altered, or aſſiſt in altering, any ſuch receipt or ſtamped ſhare, whether by adding or taking away any word, letter, or figure, in ſuch receipt or ſtamped ſhare, or ſhall fraudulently make uſe of any ſuch forged, counterfeited, or altered receipt or ſtamped ſhare; all and every ſuch perſon or perſons, being convicted of any of the offences before mentioned, ſhall be adjudged guilty of felony, and ſhall ſuffer as a felon."

All money received under this act to be paid to the receiver-general.

Application thereof.

† *Sect.* 130. By 22. Geo. 3. c. 47. ſ. 23. " All fees and ſums of money which ſhall, under this act, be received at the ſtamp office, or by any officer or officers thereof, in the execution of the truſt repoſed in ſuch officer or officers, and of which the application is not herein before directed, ſhall be paid into the hands of the receiver-general of the ſaid office for the time being, and he ſhall keep a ſeparate and diſtinct account thereof; and thereout ſhall pay the expence the ſaid office ſhall be put to in executing

" ecuting this act, and alſo in defraying the expences at-
" tending the commiſſion made forth for managing, direct-
" ing, and drawing, the lottery eſtabliſhed by an act made
" in this ſeſſion of parliament, intituled, *An act for raiſing a*
" *certain ſum of money by way of annuities, and for eſtabliſhing*
" *a lottery*, in ſuch manner as by the ſaid commiſſioners, or
" any three or more of them, ſhall, from time to time, be
" appointed; but ſubject, nevertheleſs, to ſuch rules and
" orders, in reſpect to the ſame, as ſhall be given to the ſaid
" commiſſioners, from time to time, by the commiſſioners
" of the treaſury, or any three or more of them, or the lord
" high treaſurer for the time being; and as to the reſidue of
" ſuch ſums of money, the ſaid receiver-general ſhall pay
" ſuch reſidue into the receipt of the exchequer, at ſuch
" time and in ſuch manner as the duties now charged on
" ſtamped vellum, parchment, and paper, are ſo directed to
" be paid: and in the office of the auditor of the ſaid re-
" ceipt of the exchequer there ſhall be provided and kept a
" book or books, in which all the monies paid into the ſaid
" receipt under this act ſhall be entered ſeparate and apart
" from all other monies paid or payable to his majeſty, his
" heirs or ſucceſſors, upon any other account; and ſuch
" monies ſo paid into the ſaid receipt of the exchequer under
" this act, ſhall, from time to time, be reſerved for the diſ-
" poſition of parliament, and ſhall not be iſſued but by
" authority of parliament."

† *Sect.* 131. By 22. Geo. 3. c. 47. ſ. 24. " All penalties Penalties.
" which ſhall be incurred by any perſon or perſons offend-
" ing againſt this act (except where a different mode of pro-
" ſecution is herein-before ſpecially preſcribed) ſhall be re-
" coverable before any two or more of his majeſty's juſtices
" of the peace for the county, city, town, or other diviſion,
" in which the offence ſhall be committed, upon proof of
" the offence by the oath or oaths of one or more credible
" witneſs or witneſſes, or on confeſſion of the offender;
" and one moiety of every ſuch penalty ſhall belong to the
" informer or informers proſecuting for the ſame, and the
" other moiety to his majeſty, his heirs and ſucceſſors; and
" in caſe of non-payment of any ſuch penalty, it ſhall be
" levied by diſtreſs and ſale of the offender's goods and
" chattels, by warrant under the hands and ſeals of ſuch
" juſtices; and the overplus of the money raiſed, after de-
" ducting the penalty and the expences of the diſtreſs and
" ſale, ſhall be rendered to the owner; and for want of ſuf-
" ficient diſtreſs, the offender ſhall be ſent by ſuch juſtices
" to the houſe of correction, there to be kept to hard labour
" for any time not exceeding ſix months, nor leſs than

" three months, as such justices shall think proper, unless " such penalty shall be sooner paid or satisfied."

Justices may mitigate. Limitation of actions.

† *Sect.* 132. But by 22. Geo. 3. c. 47. s. 25, it is provided, " That it shall and may be lawful to and for the said " respective justices, where they shall see cause to mitigate " or lessen any such penalty, to do so accordingly, in such " manner as they in their discretion shall think fit, the rea- " sonable costs and charges of the officers or informers " being always allowed over and above such mitigation, " and so as such mitigation do not reduce the penalty to " less than one moiety thereof, over and above the said " costs and charges; any thing contained in this act to the " contrary notwithstanding."

† *Sect.* 133. By 22. Geo. 3. c. 47. s. 26. it is enacted, " That no person shall be liable to any prosecution for any " offence against this act, whereby any pecuniary penalty " shall be incurred, unless such prosecution shall be com- " menced within twelve months after commission of such " offence; and if any suit or action shall be prosecuted in " *England*, against any person or persons, for any thing done " in pursuance of this act, such person or persons may plead General issue. " the general issue, and give this act or the special matter " in evidence, on any trial to be had thereupon, and that " the same was done by authority of this act; and if a ver- " dict shall pass for the defendant or defendants, or the " plaintiff or plaintiffs shall become nonsuit, or discontinue " his, her, or their action or actions after issue joined, or " if, on demurrer or otherwise, judgment shall be given " against the plaintiff or plaintiffs, the defendant or de- Treble costs. " fendants shall recover treble costs, and have the like re- " medy for the same as any defendants have by law in other " cases."

Commencement of this act.

† *Sect.* 134. By 22. Geo. 3. c. 47. s. 27. " This act " shall begin to have force on the twenty-fifth day of *July* " 1782; and from and immediately after the commence- " ment thereof, an act, made in the nineteenth year of his " present majesty (intituled, *An act for licensing and regulating* 19. Geo. 3. c. 21. repealed. " *lottery-office keepers)*, and also so much of any other act or " acts made before the present session of parliament, in re- " spect to the regulation either of the keepers of lottery " offices or the sale of lottery tickets, shall be, and the same " are, hereby repealed; but such repeal shall not operate " upon, or to the prejudice of, any action, suit, or prose- " cution, which shall be commenced or depending before " the commencement of this act."

† *Sect.*

† *Sect.* 135. By 27. Geo. 3. c. 1. which recites the above ſtatutes 8. Geo. 1. c. 2. 12. Geo. 2. c. 28. and 22. Geo. 3. c. 47. it is enacted, "That all and every the ſaid recited acts, "and every article and thing in them contained, touching "and concerning lotteries, and not by this act altered or "repealed, or other proviſion made in lieu thereof, ſhall be "duly put in execution, according to the tenor of the ſaid "recited acts, and under the penalties therein contained, to "be raiſed, levied, and diſpoſed of, as in and by this act is "directed."

† *Sect.* 136. By 27. Geo. 3. c. 1. ſ. 2. "No pecuniary "penalty or penalties, which ſhall be incurred by any perſon "or perſons offending againſt ſuch parts of the ſaid acts, or "any of them, as touch and concern lotteries, ſhall be re- "covered or recoverable before any juſtice or juſtices of the "peace, but ſhall and may be ſued for by any perſon or "perſons whomſoever, at any time within ſix calendar "months next after ſuch offence ſhall be committed, and "recovered by action of debt, bill, plaint, ſuit, or infor- "mation, in any of his majeſty's courts of record at *Weſt-* "*minſter*; in which no eſſoin, protection, wager of law, or "more than one imparlance, ſhall be allowed; and one "moiety of the ſaid reſpective penalties, when recovered, "ſhall, in every ſuch caſe, go and be applied to the uſe of "his majeſty, his heirs and ſucceſſors, and the other moiety, "with full coſts of ſuit, to the perſon or perſons who ſhall "ſue or proſecute for the ſame reſpectively; and upon "every ſuch action, bill, plaint, ſuit, or information, a "*capias*, or other writ, ſhall and may iſſue; the firſt proceſs "ſpecifying therein the amount of the penalty or penalties "ſued for, whereof an affidavit ſhall be firſt duly made and "filed; and the defendant or defendants ſhall, in ſuch caſe, "be obliged to give ſufficient bail or ſecurity, by natural- "born ſubjects, perſons naturalized, or denizens, to the "perſon or perſons to whom ſuch *capias*, or other writ, "ſhall be directed, to appear in the court out of which ſuch "proceſs ſhall be iſſued, at the day of the return of ſuch "proceſs, to anſwer ſuch ſuit or proſecution; and ſhall "likewiſe, at the time of ſuch appearance, give ſufficient "bail or ſecurity, by ſuch perſons as aforeſaid, in the ſaid "court, to anſwer and pay all the forfeitures and penalties "incurred for ſuch offence or offences, together with the "coſts of ſuit, in caſe he, ſhe, or they ſhall be convicted "thereof, or to yield his, her, or their body or bodies to "priſon: provided always, that the bail herein before re- "quired to be given ſhall, in no caſe, exceed the ſum of "five hundred pounds."

Penalties incurred under the recited acts may be ſued for by any perſons whomſoever within ſix months.

Application of penalties.

In every action for penalties, the defendant to give bail to anſwer it.

Bail not to exceed 500l.

27 Geo. 2. c. 3. recited,

† *Sect.* 137. By 27. Geo. 3. c. 1. ſ. 3. it is recited, "That in and by an act made and paſſed in the ſeventeenth year of Geo. 2. intituled, *An Act to amend and make more effectual the laws relating to rogues, vagabonds, and other idle and diſorderly perſons, and to houſes of correction*, it is enacted, that all perſons playing or betting at any unlawful games or plays ſhall be deemed rogues and vagabonds within the true intent and meaning of that act; and whereas all lotteries not eſtabliſhed by act of parliament in *Great Britain* or *Ireland* are declared to be common and public nuiſances: and whereas all adventuring with lottery tickets in ſuch lotteries as are eſtabliſhed by act of parliament, other than by the actual ſale of tickets, and of ſuch ſhares thereof as are permitted by law to be ſold, is wholly prohibited by the ſaid act of the twenty-ſecond year of the reign of his preſent majeſty; and whereas it would tend greatly to ſuppreſs ſuch abuſes in the lottery now eſtabliſhed, and in all future lotteries that may hereafter be eſtabliſhed by law, if the perſon and perſons guilty of any of the offences againſt this act, or ſuch parts of the herein-before mentioned acts, or any of them, as touch and concern lotteries, might be puniſhable under the ſaid act paſſed in the ſeventeenth year of Geo. 2. except in caſes of inſurances on tickets by perſons actually poſſeſſed thereof, under the reſtrictions herein-after mentioned:" it is therefore enacted,

and extended to perſons who ſhall deal in tickets without taking out a licence purſuant to 22. Geo. 2. or ſell chances, &c.

"That all and every perſon and perſons who ſhall publickly or privately open, ſet up, continue, or keep, by himſelf or herſelf, or by any other perſon or perſons, any office, or other place for buying, ſelling, or otherwiſe dealing in any tickets, or any ſhares of tickets, in any lottery now eſtabliſhed, or hereafter to be eſtabliſhed, by any *Britiſh* or *Iriſh* act of parliament, or for regiſtering the numbers of ſuch tickets, without the authority of a licence duly obtained for that purpoſe from the commiſſioners for managing the duties upon ſtamped vellum, parchment, and paper, for the time being, in the manner in and by the ſaid recited act of the twenty-ſecond year of the reign of his preſent majeſty directed: and all and every perſon and perſons (except as herein-after is provided) who ſhall, by himſelf, herſelf, or themſelves, or by any other perſon or perſons, or for his, her, or their own account, or for or on the account, or as the ſervant, agent, or factor, of any other perſon or perſons, ſell, or cauſe or procure to be ſold, the chance or chances of any ſuch ticket or tickets, or any ſhare or ſhares thereof, for a day, or part of a day, or any leſs time than the whole time of drawing in any ſuch lottery then to come; or inſure, or cauſe or procure any other perſon or perſons to inſure, for or againſt the drawing of any ſuch ticket or tickets; or ſhall receive any money or goods whatſoever, in conſideration of any agreement or promiſe

" promiſe to repay any ſum or ſums of money, or to deliver " the ſame, or any plate, jewels, or other goods whatſoever, " if any ſuch ticket or tickets ſhall prove fortunate or unfor- " tunate, or upon any other chance or chances, event or " events, contingency or contingencies, relative or appli- " cable to the drawing of any ſuch ticket or tickets, whether " as to the time of their being drawn, or otherwiſe howſo- " ever, ſhall be deemed rogues and vagabonds, within the " true intent and meaning of the ſaid recited act of the " ſeventeenth year of the reign of his ſaid late majeſty, and " ſhall be puniſhable as ſuch rogues and vagabonds accor- " dingly; and all perſons who ſhall be found offending " againſt this act, in the manner above-mentioned, ſhall " and may be apprehended and conveyed before ſome juſtice " or juſtices of the peace, as in and by the ſaid recited act, " in relation to the rogues and vagabonds therein deſcribed, " is directed; and the juſtice or juſtices before whom ſuch " offender ſhall be brought, ſuch offender not having been " ſued or proſecuted for the ſame offence, without covin or " colluſion, in ſome of his majeſty's courts of record, by " ſuch action of debt, bill, plaint, ſuit, or information, as " aforeſaid, ſhall and may, upon full and ſufficient proof of " the offence, in the manner in and by the ſaid recited act " directed, order ſuch offender to be ſent to the houſe of " correction, there to remain until the next general or " quarter ſeſſions of the peace for the county, riding, " diviſion, or place, where the ſaid offence was committed; " and the juſtices, at ſuch ſeſſions, ſhall enter upon the " examination of the caſe, and proceed therein according " to the directions of the ſaid recited act of the ſeventeenth " year of his ſaid late majeſty; and all juſtices of the peace, " mayors, bailiffs, conſtables, headboroughs, and other his " majeſty's civil officers, within their reſpective juriſdictions, " are hereby impowered and ſtrictly required to uſe their " utmoſt endeavours to prevent the committing of any of " the offences aforeſaid, by all lawful ways and means; and " ſhall be, and are hereby indemnified for any thing done in " execution of this act."

Juſtices to commit offenders to the houſe of correction till the next quarter-ſeſſion.

† *Sect.* 138. By 27. Geo. 3. c. 1. ſ. 3. it is further enacted, " That all other the powers, authorities, rules, " directions, puniſhments, and proviſions, preſcribed and " inflicted in and by the ſaid recited act of the ſeventeenth " year of his ſaid late majeſty, for the apprehending, ſecu- " ring, and puniſhing perſons as rogues and vagabonds " within the true intent and meaning of the ſaid act, not " hereby altered, ſhall be applied and carried into execution " in relation to the perſons hereby declared to be rogues " and vagabonds, as fully, to all intents and purpoſes, as if

The powers of recited act of 17. Geo. 2. extended to this act.

" the ſame powers, authorities, rules, directions, puniſh-
" ments, and proviſions, and every of them, had ſeverally
" and reſpectively been re-enacted in this act."

From the paſſing of this act, the poſſeſſor of a whole ticket may inſure it, by a written agreement, for its own value.

† *Sect.* 139. But by 27. Geo. 3. c. 1. ſ. 4. it is provided, " That it ſhall and may be lawful for any perſon actually poſſeſſed of any whole undrawn ticket, in " any lottery now eſtabliſhed, or hereafter to be eſtabliſhed by law in *Great Britain*, to make, or cauſe to " be made, any inſurance on his or her ticket, for the indemnifying himſelf or herſelf againſt any loſs which " he or ſhe may ſuſtain by adventuring in the ſaid lottery for or by reaſon of ſuch ticket, ſo as every contract or agreement for ſuch inſurance be reduced into " writing (without being ſubject to any of the duties under " the management of the commiſſioners of ſtamps) before " the time of ſuch ticket being drawn in the ſaid lottery ; " and ſo as the name of the poſſeſſor of ſuch ticket at the " time of ſuch inſurance, the number thereof, the lottery to " which ſuch ticket ſhall belong, and the amount of the " premiums received thereon, be reſpectively inſerted and " expreſſed in ſuch agreement, and ſo as every ſuch inſurance be made upon a whole ticket or whole tickets only, " on condition to pay the full amount or value thereof, " and not otherwiſe ; any thing contained in this act, or in " the ſaid act of the twenty-ſecond year of the reign of his " preſent majeſty, *for licenſing lottery-office keepers, and regulating the ſale of lottery tickets*, to the contrary thereof notwithſtanding."

When an inſurance is made, it muſt be for the whole time remaining of the drawing ; and the ticket muſt be depoſited with the receiver-general of the ſtamp duties, or ſome perſon appointed by him to receive it.

† *Sect.* 140. By 27. Geo. 3. c. 1. ſ. 5. it is provided alſo, " That no ſuch inſurance ſhall be for a leſs time than " ſhall then remain of the drawing of the ſaid lottery ; and " that every ſuch ticket ſo inſured ſhall be depoſited, by the " perſon ſo inſuring the ſame, in an office eſtabliſhed, or " to be eſtabliſhed, by the commiſſioners for managing the " duties upon ſtamped vellum, parchment, and paper, for " the time being, for the depoſit of tickets intended to be " ſold in ſhares, by virtue of an act paſſed in the twenty-" ſecond year of his preſent majeſty's reign, intituled, " *An act for licenſing lottery-office keepers, and regulating the ſale of lottery tickets* ; and ſhall be there left with the " receiver-general of his majeſty's ſtamp duties, or ſome " perſon or perſons to be appointed by him to receive the " ſame, and who is and are hereby authorized and required " to receive the ſame : provided alſo, that every ſuch ticket " ſo depoſited may be aſſignable, together with ſuch " inſurance."

Tickets and inſurances aſſignable.

† *Sect.*

† *Sect.* 141. By 27. Geo. 3. c. 1. ſ. 6. it is further provided, "That if any perſon or perſons whatſoever, not "being duly licenſed under the ſaid act of the twenty-"ſecond year of his preſent majeſty's reign, ſhall, from and "after the day on which this act ſhall receive his majeſty's "royal aſſent, grant, ſign, or underwrite any agreement for "any ſuch inſurance as aforeſaid; or ſhall take or receive "any premium, or conſideration in the nature of a pre-"mium, for ſuch inſurance, every ſuch perſon or perſons, "not duly licenſed as aforeſaid, ſhall be ſubject to the like "pains, penalties, and forfeitures, as are inflicted on per-"ſons keeping lottery-offices without the authority of ſuch "licence by the ſaid act of the twenty-ſecond year of his "preſent majeſty's reign, or by this act, to be levied and "recovered, inflicted, applied, and carried into execution, "as in and by this act is directed, and according to the "true intent and meaning thereof."

Perſons not duly licenſed making inſurances, liable to the penalties of keeping unlicenſed lottery-offices.

† *Sect.* 142. By 27. Geo. 3. c. 1. ſ. 7. it is further provided, "That no perſon ſhall be liable to be proſecuted "for any offence againſt this act, or ſuch parts of the "herein-before mentioned acts, or any of them, as touch "and concern lotteries, by both the ways by this act pre-"ſcribed; nor ſhall any perſon againſt whom any action, "ſuit, or information, for the recovery of a pecuniary "penalty hath been commenced and carried on with effect, "be liable to impriſonment as a rogue and vagabond under "this act for the ſame offence; and that where any perſon "ſhall be convicted and ſentenced to impriſonment as a "rogue and vagabond under this act, ſuch perſon ſhall not "be liable afterwards to be proſecuted for any pecuniary "penalty for the ſame offence."

Offenders not to be liable to proſecutions for pecuniary penalties, and alſo as vagabonds;

† *Sect.* 143. By 27. Geo. 3. c. 1. ſ. 8. it is provided alſo, "That no perſon or perſons ſhall be ſubject or "liable to any proſecution before any juſtice or juſtices of "the peace, for any offence againſt the herein-before men-"tioned acts, touching and concerning any lottery now "eſtabliſhed, or heretofore eſtabliſhed in this kingdom, "unleſs information thereof ſhall have been made on or "before the fifth day of *February* one thouſand ſeven hun-"dred and eighty-ſeven."

nor before a juſtice for offences reſpecting lotteries already eſtabliſhed, unleſs information has been made before Feb. 5, 1787.

† *Sect.* 144. By 27. Geo. 3. c. 1. ſ. 9. it is further enacted, "That all ſuch penalties and forfeitures, and "ſhares of penalties and forfeitures, and ſums of money "which ſhall belong to his majeſty, his heirs, and ſuc-"ceſſors, and which ſhall be received by any officer or "officers in the execution of this act, ſhall be paid into the "hands

His majeſty's ſhare of penalties to be paid to the receiver-general of the ſtamp-office.

" hands of the receiver-general of the ſtamp office for the " time being, who ſhall keep a ſeparate and diſtinct account " thereof, and thereout ſhall pay the expence the ſaid office " ſhall be put to in executing this act; and the ſaid receiver- " general ſhall pay the reſidue into the receipt of the ex- " chequer, at ſuch time, and in ſuch manner, as other pe- " nalties and forfeitures, due and payable to his majeſty, " are or ſhall be paid or payable."

† *Sect.* 145. By 27. Geo. 3. c. 1. ſ. 10. it is further enacted, " That if any perſon or perſons ſhall at any time " or times be ſued, moleſted, or proſecuted, for any thing " by him, her, or them done or executed in purſuance of " this act, or of any clauſe, matter, or thing herein con- General iſſue. " tained, ſuch perſon or perſons may plead the general iſſue, " and give the ſpecial matter in evidence, for his, her, or " their defence; and if, upon the trial, a verdict ſhall paſs " for the defendant or defendants, or the plaintiff or plain- " tiffs ſhall become nonſuited, then ſuch defendant or Treble coſts. " defendants ſhall have treble coſts awarded to him, her, or " them, againſt ſuch plaintiff or plaintiffs."

Jaques *v.* Golightly, 2. Bl. Rep. 1073. Jaques *v.* Withy, 1. H. Bl. Rep. 65.

† *Sect.* 146. It has been decided, that if a perſon inſures the numbers of ſtate lottery tickets, and wins, and the inſurer refuſes to pay him, he has no remedy to recover the winnings, but he may recover back the monies which he paid as premium for ſuch inſurance.

Davis *v.* Mazzinghi, 1. Term Rep. 705. Watſon *v.* Shaw, 2. Term Rep. 654. Pricket *v.* Croſs, 2. H. Bl. Rep. 17.

† *Sect.* 147. It is alſo ſettled, that an affidavit to hold the party to bail under the ſtatute 27. Geo. 3. c. 1. ſhould ſpecify the nature of the offence, and aver that the defendant has incurred the forfeiture: but the offence need not be deſcribed circumſtantially; it is ſufficient if it ſtate that the defendant " *inſured or cauſed to be inſured*, &c." Nor is the plaintiff obliged to ſwear that the defendant is indebted to him in the amount of the penalty.

King *qui tam v.* Horne, 4. Term Rep. 349.

† *Sect.* 148. But it is decided, that a plaintiff who ſues for penalties under the 27. Geo. 3. c. 1. ſ. 2. muſt make an affidavit previous to the ſuing out of the writ, ſpecifying the amount of the penalties ſued for, and that amount muſt be ſpecified in the firſt proceſs.

Holland *qui tam v.* Bothmore, 4. Term Rep. 228.

† *Sect.* 149. It is alſo decided, that ſuch affidavit may include ſeveral offences, and need not ſtate that the defendant received any conſideration for making the inſurances.

† *Sect.*

† *Sect.* 150. But it is alſo ſettled, that where ſeveral perſons have ſeparately incurred penalties for printing illegal ſchemes in the lottery, a ſeparate affidavit muſt be made and filedagainſt each of them; and if they be all joined in one affidavit, the irregularity is not waived by their putting in bail; but the Court on motion will ſtay the proceedings againſt them all. Goodwin *qui tam v.* Perry, 4. Term Rep. 577.

† *Sect.* 151. It is decided, that an unſtamped agreement to ſell a ſhare of a ticket in the lottery before the tickets are depoſited with the commiſſioners, is within the penalty inflicted by 22. Geo. 3. c. 47. ſ. 21. Rex *v.* Hawkſworth, 1. Term Rep. 450.

† *Sect.* 152. It is alſo ſettled, that an information againſt a perſon for inſuring a ticket in the lottery, muſt ſtate that the ticket on which the inſurance is made was a ticket in *the ſtate lottery*. Rex *v.* Trelawney, 1. Term Rep. 222.

† *Sect.* 153. It is alſo decided, that a conviction on the 22. Geo. 3. c. 47. is bad, if the evidence do not ſtate the offence to have been committed where laid. Rex *v.* Jefferies, 1. Term Rep. 241.

† *Sect.* 154. So alſo if there are two offences laid in the information, a conviction "for the *ſaid* offence" is bad. Rex *v.* Salomons, 1. Term Rep. 249.

† *Sect.* 155. It is alſo ſettled, that the ſale of lottery tickets, by which the purchaſer is to be intitled to all the benefit of them, except the ten pound prizes, is prohibited and made void by 22. Geo. 3. c. 47.; for ſince this act of parliament there is only one way of diſpoſing of any intereſt in a ticket leſs than the whole, and that is in ſhares not leſs than ſixteenths. Deey *v.* Shee, 2. Term Rep. 621.

† *Sect.* 156. It is alſo decided, that if the printer of a newſpaper publiſhes an illegal propoſal for gambling in the lottery, he incurs the penalty inflicted by 22. Geo. 3. c. 47. ſ. 13. King *qui tam v.* Smith, 4. Term Rep. 414.

As to THE SIXTH POINT, *viz.* The offence of gaming by means of the public funds.

† *Sect.* 157. By 7. Geo. 2. c. 8. it is recited, "That great inconveniences have ariſen, and do daily ariſe, by the wicked, pernicious, and deſtructive practice of ſtock-jobbing, whereby many of his majeſty's good ſubjects have been and are diverted from purſuing and exerciſing their lawful trades and vocations, to the utter ruin of themſelves and families, to the great diſcouragement of induſtry, and to the manifeſt detriment of trade and commerce;" for remedy thereof See 4. Burr. 2069.

All contracts made for liberty to put upon, accept, or refuse, any public ſtocks or ſecurities, and wagers, &c. ſhall be void, &c.

thereof it is enacted, " That all contracts and agreements " whatſoever, which ſhall be made or entered into by or be- " tween any perſon or perſons whatſoever, upon which any " premium, or conſideration in the nature of a premium, " ſhall be given or paid for liberty to put upon, or to deliver, " receive, accept, or refuſe, any public or joint ſtock, or other " public ſecurities whatſoever, or any part, ſhare, or inte- " reſt therein, and alſo all wagers and contracts in the na- " ture of wagers, and all contracts in the nature of puts and " refuſals, relating to the then preſent or future price or " value of any ſuch ſtock or ſecurities as aforeſaid, ſhall be " null and void to all intents and purpoſes whatſoever, and " all premiums, ſum or ſums of money whatſoever, which " ſhall be given, received, paid, or delivered, upon all ſuch " contracts or agreements, or upon any ſuch wagers, or " contracts in the nature of wagers, as aforeſaid, ſhall be re- " ſtored and repaid to the perſon or perſons who ſhall give, " pay, or deliver the ſame, who ſhall be at liberty, within " ſix months from and after the making ſuch contract or " agreement, or laying any ſuch wager, to ſue for and re- " cover the ſame from the perſon or perſons to whom the " ſame is or ſhall be paid or delivered, with double coſts of " ſuit, by action of debt founded on this act, to be proſe- " cuted in any of his majeſty's courts of record, in which " action no eſſoin, protection, wager of law, or more than " one imparlance, ſhall be allowed; and it ſhall be ſufficient " therein for the plaintiff to alledge, that the defendant is " indebted to the plaintiff, or has received to the plaintiff's " uſe, the money or premium ſo paid or received, whereby " the plaintiff's action accrued to him, according to the " form of this ſtatute, without ſetting forth the ſpecial " matter."

Perſons ſued on this act obliged to anſwer on oath.

† *Sect.* 158. By 7. Geo. 2. c. 8. ſ. 2. For the better diſcovery of the monies or premiumw hich ſhall be given, paid, or delivered, and to be ſued for and recovered, as aforeſaid, it is further enacted, " That all and every the " perſon or perſons, who, by virtue of this preſent act, ſhall " or may be liable to be ſued for the ſame, ſhall be obliged " and compellable to anſwer upon oath ſuch bill as ſhall be " preferred againſt him or them in any court of equity for " diſcovering any ſuch contract or wager, and the ſum of " money or premium ſo given, paid, or delivered, as afore- " ſaid."

Security for coſts.

† *Sect.* 159. But by 7. Geo. 2. c. 8. ſ. 3. it is provided, " That the plaintiffs, relators, or informers, in ſuch bill, " ſhall and do (at the time of bringing or filing ſuch bill) " give good and ſufficient ſecurity to anſwer and pay the " defendants

" defendants in ſuch bill full coſts of ſuit, in caſe ſuch coſts " ſhall be adjudged to the defendants, and that no perſon " ſhall be obliged to appear or to anſwer ſuch bill until " ſuch ſecurity is given."

† *Sect.* 160. By 7. Geo. 2. c. 8. ſ. 4. it is further enacted, " That all and every perſon or perſons whatſoever, " who ſhall enter into, make, or execute, any ſuch contract, " bargain, or agreement, upon which any premium, or con- " ſideration in the nature of a premium, ſhall be given or " paid for liberty to put upon, or to deliver, receive, ac- " cept, or refuſe, any public or joint ſtock, or other public " ſecurities whatſoever, or any part, ſhare, or intereſt therein, " or any contract or bargain in the nature of puts and re- " fuſals, as aforeſaid, or ſhall lay any ſuch wager, or make " any ſuch contract in the nature of a wager, as aforeſaid, " (except ſuch perſon or perſons who ſhall actually and *bonâ* " *fide*, without covin or colluſion, ſue and with effect pro- " ſecute for the recovery of the money or premium given, " delivered, or paid, by him, her, or them, as aforeſaid; " and alſo except ſuch perſon or perſons, who ſhall volun- " tarily, before any action or ſuit commenced, actually and " *bonâ fide*, without covin or colluſion, repay or tender, " before one or more witneſs or witneſſes, ſuch monies or " premium as he, ſhe, or they, ſhall have had, taken, re- " ceived, or been paid, as aforeſaid; and alſo except ſuch " perſons who ſhall diſcover ſuch tranſactions in any court " of equity,) ſhall forfeit and pay the ſum of five hundred " pounds; and alſo all and every brokers, agents, ſcriveners, " or other perſons negociating, tranſacting, or writing, any " ſuch contract, bargain, or agreement, as aforeſaid, ſhall " likewiſe forfeit and pay the ſum of five hundred pounds; " which ſaid penalties ſhall and may be recovered by action " of debt, bill, plaint, or information, in any of his ma- " jeſty's courts of record at *Weſtminſter*, in which no eſſoin, " privilege, protection, or wager of law, or more than one " imparlance, ſhall be allowed; one moiety thereof to the " uſe of his majeſty, his heirs and ſucceſſors, and the other " moiety thereof to the uſe of him, her, or them, who ſhall " ſue for the ſame."

Five hundred pounds penalty on making or executing any ſuch puts or bargains.

Exceptions.

† *Sect.* 161. By 7. Geo. 2. c. 8. ſ. 5. " For preventing " the evil practice of compounding or making up differ- " ences for ſtocks or other ſecurities bought, ſold, or at any " time hereafter to be agreed ſo to be, it is further enacted, " That no money or other conſideration whatſoever (ex- " cept as herein-after is provided) ſhall be voluntarily " given, paid, had, or received, for the compounding, ſatis- fying,

One hundred pounds penalty on giving or receiving money to compound differences relating to ſtock not actually delivered.

" fying, or making up any difference for the not delivering,
" transferring, having, or receiving any public or joint ſtock,
" or other public ſecurities, or for the not performing of
" any contract or agreement ſo ſtipulated and agreed to be
" performed; but that all and every ſuch contract and agree-
" ment ſhall be ſpecifically performed and executed on all
" ſides, and the ſtock or ſecurity thereby agreed to be aſ-
" ſigned, transferred, or delivered, ſhall be actually ſo done,
" and the money, or other conſideration thereby agreed to
" be given and paid for the ſame, ſhall alſo be actually and
" really given and paid; and all and every perſon and per-
" ſons whatſoever, who ſhall voluntarily compound, make
" up, pay, ſatisfy, take, or receive, ſuch difference money,
" or other conſideration whatſoever, for the not delivering,
" transferring, aſſigning, having, or receiving ſuch ſtock,
" or other ſecurity, ſo to be agreed to be delivered, tranſ-
" ferred, aſſigned, had, or received, as aforeſaid (except in
" the manner herein-after provided), ſhall forfeit and pay
" the ſum of one hundred pounds, to be recovered by action
" of debt, bill, plaint, or information, in any of his ma-
" jeſty's courts of record at *Weſtminſter*, in which no eſſoin,
" privilege, protection, or wager of law, or more than one
" imparlance, ſhall be allowed; one moiety thereof to the
" uſe of his majeſty, his heirs and ſucceſſors, and the other
" moiety thereof to the uſe of him, her, or them, who ſhall
" ſue for the ſame."

Stock ſold, and not paid for at the time prefixed, may be ſold to any other perſons.

† *Sect.* 162. But by 7. Geo. 2. c. 8. ſ. 6. it is provided,
" That no perſon or perſons, who ſhall ſell any public or
" joint ſtock, or other public ſecurities, to be delivered and
" paid for on a certain day, and which ſhall be refuſed or
" neglected to be paid for according to ſuch agreement,
" ſhall be obliged to transfer the ſame; but it ſhall and may
" be lawful for ſuch perſon or perſons to ſell ſuch ſtock or
" other ſecurities, which ſhall be ſo refuſed or neglected to
" be paid for, to any other perſon or perſons, for the beſt
" price which can be obtained; and after ſuch ſale to re-
" ceive (if the parties can agree) or to recover, as aforeſaid,
" from the perſon or perſons who firſt contracted for the
" ſame, all the damage which ſhall be ſuſtained thereby."

Stock bought, and not tranſferred at the time prefixed, the buyer may purchaſe other ſtock, and recover his damage.

† *Sect.* 163. And by 7. Geo. 2. c. 8. ſ. 7. it is provided alſo, " That it ſhall and may be lawful to and for any per-
" ſon or perſons, who ſhall buy any public or joint ſtock,
" or other public ſecurities, to be accepted and paid for on
" a future day, and which ſhall be refuſed or neglected to
" be tranſferred, to buy the like quantity of ſuch ſtock, or
" other public ſecurities, of any other perſon or perſons, at
" the current market price, and to recover and receive, after
" ſuch

" ſuch purchaſe and acceptance (if the parties can agree), " from the perſon or perſons who firſt contracted to ſell or " deliver the ſame, the damage which ſhall be ſuſtained by " reaſon of the not delivering or not transferring ſuch ſtock " or other ſecurities; any thing in this act, or any law, " uſage, or cuſtom, to the contrary notwithſtanding."

† *Sect.* 164. By 7. Geo. 2. c. 8. ſ. 8. after reciting, that " it is a frequent and miſchievous practice for perſons to ſell and diſpoſe of ſtocks, or other ſecurities, of which they are not poſſeſſed," it is further enacted, " That all con- " tracts and agreements whatſoever, which ſhall be made or " entered into for the buying, ſelling, aſſigning, or tranſ- " ferring, of any public or joint ſtock or ſtocks, or other " public ſecurities whatſoever, or of any part, ſhare, or in- " tereſt therein, whereof the perſon or perſons contracting " or agreeing, or on whoſe behalf the contract or agreement " ſhall be made, to ſell, aſſign, and transfer the ſame, ſhall " not, at the time of making ſuch contract or agreement, " be actually poſſeſſed of, or intitled unto, in his, her, or " their own right, or in his, her, or their own name or " names, or in the name or names of a truſtee or truſtees " to their uſe, ſhall be null and void to all intents and pur- " poſes whatſoever; and all and every perſon and perſons " whatſoever, contracting or agreeing, or on whoſe behalf, " and with whoſe conſent, any contract or agreement ſhall " be made, to ſell, aſſign, or transfer, any public or joint " ſtock or ſtocks, or other public ſecurities, whereof ſuch " perſon or perſons ſhall not, at the time of making ſuch " contract or agreement, be actually poſſeſſed of, or intitled " unto, in his, her, or their own name or names, or in the " name or names of a truſtee or truſtees to their uſe, or " their own right as aforeſaid, ſhall forfeit and pay the ſum " of five hundred pounds, to be recovered by action of debt, " bill, plaint, or information, in any of his majeſty's courts " of record at *Weſtminſter*, in which no eſſoin, privilege, " protection, or wager of law, or more than one imparlance, " ſhall be allowed; one moiety thereof to the uſe of his " majeſty, his heirs and ſucceſſors, and the other moiety " thereof to the uſe of him, her, or them, who ſhall ſue for " the ſame; and all and every broker or brokers, agent or " agents, who ſhall negociate, tranſact, or intermeddle, in " the making or procuring to be made any ſuch contract or " agreement as aforeſaid, and ſhall know that the perſon or " perſons, by whom or on whoſe behalf ſuch contract or " agreement ſhall be made, is or are not poſſeſſed of, or in- " titled unto, the ſtock or ſecurity concerning which ſuch " contract or agreement ſhall be made, in his, her, or their " own name or names, or in the name or names of a truſtee

Five hundred pounds penalty on buying or ſelling ſtock of which they are not actually poſſeſſed at the time of the contract.

One hundred pounds penalty on brokers negociating ſuch contract.

" or

" or truſtees for their uſe or right, ſhall, for every ſuch of-
" fence, forfeit and pay the ſum of one hundred pounds, to
" be recovered by action of debt, bill, plaint, or information,
" in any of his majeſty's courts of record at *Weſtminſter*,
" in which no eſſoin, privilege, protection, or wager of law,
" or more than one imparlance, ſhall be allowed; one moiety
" thereof to the uſe of his majeſty, his heirs and ſucceſſors,
" and the other moiety thereof to the uſe of him, her, or
" them, who ſhall ſue for the ſame."

All contracts for ſtock to be truly entered in the broker's book

† *Sect.* 165. By 7. Geo. 2. c. 8. ſ 9. " All and every
" broker or brokers, or other perſon or perſons, who ſhall
" negociate or act as a broker receiving brokerage in the
" buying, ſelling, or otherwiſe diſpoſing of any of the ſaid
" public or joint ſtocks, or other public ſecurities, ſhall
" reſpectively keep a book or regiſter, which ſhall be called
" *The Broker's Book*; in which ſaid book he and they ſhall
" fairly, juſtly, and truly enter, all contracts, agreements, and
" bargains, that he or they ſhall from time to time make be-
" tween any perſon or perſons whatſoever, on the day of the
" making ſuch contract or agreement, together with the names
" of the principal parties, as well buyers as ſellers, and alſo
" the day of making ſuch contract or agreement, to the in-
" tent and purpoſe that ſuch broker or brokers, and other
" perſon or perſons acting or negociating as ſuch as aforeſaid,
" ſhall, from time to time, produce ſuch book or regiſter when
" thereunto lawfully required: and in caſe ſuch broker or
" brokers, or any other who ſhall negotiate or act as a broker
" as aforeſaid, in relation to any the ſaid matters, ſhall not
" keep ſuch book or regiſter, or ſhall wilfully omit to enter
on penalty of 50l. for each offence. " therein fairly, juſtly, and truly, any ſuch contract, bargain,
" or agreement, as aforeſaid, he or they ſhall, for every ſuch
" offence or omiſſion, forfeit and pay the ſum of fifty
" pounds, to be recovered by action of debt, bill, plaint, or
" information, in any of his majeſty's courts of record at
" *Weſtminſter*, in which no eſſoin, privilege, protection, or
" wager of law, or more than one imparlance, ſhall be al-
" lowed; one moiety thereof to the uſe of his majeſty, his
" heirs and ſucceſſors, and the other moiety thereof to the
" uſe of him, her, or them, who ſhall ſue for the ſame."

Accountant of the chancery may be as before.

† *Sect.* 166. But by 7. Geo. 2. c. 8. ſ. 10. it is provided,
" That nothing in this act contained ſhall extend, or be
" conſtrued to extend, to any contracts or agreements for
" the purchaſe or ſale of any ſtock, annuities, or other pub-
" lic ſecurities, to be made with the privity of the ac-
" countant-general of the court of chancery, in purſuance
" of any decree or order of the ſaid court; but that all ſuch
" contracts and agreements may be made and performed in

" the

" the ſame manner as they might have been if this act had " never been made."

† *Sect.* 167. And by 7. Geo. 2. c. 8. ſ. 11. it is provided alſo, " That nothing in this act contained ſhall extend, or " be conſtrued to extend, to hinder or prevent any perſon " or perſons from lending any ſum or ſums of money on " any public or joint ſtock, or other public ſecurities what- " ſoever, or any part, ſhare, or intereſt therein, or to pre- " vent or hinder any defeazance, contract, or agreement, " being made and entered into for the re-delivering, aſſign- " ing, or transferring, ſuch public or joint ſtock, or other " public ſecurities, or any part, ſhare, or intereſt therein, " upon the repayment of the ſum or ſums of money which " ſhall have been lent and borrowed thereupon, with intereſt " for the ſame, ſo as no premium or other conſideration " whatſoever be paid to, or received by, the perſon or per- " ſons lending ſuch money, for or in conſideration of ſuch " loan, more than legal intereſt."

This act not to hinder perſons from lending money on public ſtocks, or prevent the re-delivery thereof on repayment of the money lent.

† *Sect.* 168. It is ſaid, that if money be paid by a party to a ſtockjobbing tranſaction, he cannot recover it back as having been paid upon an illegal conſideration; becauſe both parties are made criminal, and liable to the penalties.

Jaques *v.* Withey, 2. Bl. Rep. 1075.

† *Sect.* 169. But it has been decided, that if *A.* and *B.* are concerned in ſtockjobbing contracts, and *C.* not a party to the illegal tranſaction, pay the whole loſs on the joint account, and *B.* gives a bond to *C.* for his moiety, the bond is good; but if *A.* or *B.* had paid all the money, neither of them could have maintained an action againſt the other for a moiety.

Faikney *v.* Renous, 4. Burr. 2069.

Thwait *v.* Warner, Eſp. 88.

† *Sect.* 170. So alſo it has been determined, that if two perſons jointly engage in a ſtockjobbing tranſaction, and incur loſſes, and employ a broker to pay the differences, and one of them repay the broker, with the privity and conſent of the other, the whole ſum, he may recover a moiety from that other in an action for money paid to his uſe, notwithſtanding the above ſtatute.

Petrie *v.* Hannay, 3. Term Rep. 418.

CHAPTER THE NINETY-THIRD.

OF

STROLLING PLAYERS.

† *Sect.* 1. By 10. Geo. 2. c. 28. ſ. 1. "Every perſon who "ſhall, for hire, gain, or reward, act, repre- "ſent, or perform, or cauſe to be acted, repreſented, or per- "formed, any interlude, tragedy, comedy, opera, play, farce, "or other entertainment of the ſtage, or any part or parts "therein, in caſe ſuch perſon ſhall not have any legal ſettle- "ment in the place where the ſame ſhall be acted, repre- "ſented, or performed, without authority by virtue of "letters patent from his majeſty, his heirs, ſucceſſors, or "predeceſſors, or without licence from the lord chamber- "lain of his majeſty's houſhold for the time being, ſhall "be deemed to be a rogue and a vagabond within the "intent and meaning of the ſaid recited act, and ſhall be "liable and ſubject to all ſuch penalties and puniſhments, "and by ſuch methods of conviction, as are inflicted on, "or appointed by the ſaid act for the puniſhment of rogues "and vagabonds who ſhall be found wandering, begging, "and miſordering themſelves, within the intent and mean- "ing of the ſaid recited act."

Perſons acting plays, &c. in any place where they have not a ſettlement, or without authority, &c.

to be deemed vagabonds,

† *Sect.* 2. By 10. Geo. 2. c. 28. ſ. 2. it is further enacted, "That if any perſon having or not having a legal "ſettlement as aforeſaid ſhall, without ſuch authority or "licence as aforeſaid, act, repreſent, or perform, or cauſe to "be acted, repreſented, or performed, for hire, gain, or re- "ward, any interlude, tragedy, comedy, opera, play, farce, "or other entertainment of the ſtage, or any part or parts "therein, every ſuch perſon ſhall for every ſuch offence "forfeit the ſum of fifty pounds; and in caſe the ſaid ſum "of fifty pounds ſhall be paid, levied, or recovered, ſuch "offender ſhall not for the ſame offence ſuffer any of the "pains or penalties inflicted by the ſaid recited act."

and forfeit 50l.

No new plays, or additions to old ones, to be acted, unleſs a copy be ſent to the chamberlain, &c.

† *Sect.* 3. By 10. Geo. 2. c. 28. ſ. 3. "No perſon ſhall, for hire, gain, or reward, act, perform, repreſent, or cauſe to be acted, performed, or repreſented, any new interlude, tragedy, comedy, opera, play, farce, or other entertainment of the ſtage, or any part or parts therein; or any new act, ſcene, or other part added to any old interlude, tragedy, comedy, opera, play, farce, or other entertainment of the ſtage, or any new prologue or epilogue, unleſs a true copy thereof be ſent to the lord chamberlain of the king's houſhold for the time being fourteen days at leaſt before the acting, repreſenting, or performing thereof, together with an account of the playhouſe or other place where the ſame ſhall be, and the time when the ſame is intended to be firſt acted, repreſented, or performed, ſigned by the maſter or manager, or one of the maſters or managers of ſuch playhouſe or place, or company of actors therein."

and perſons acting againſt this prohibition, &c. forfeit 50l. and their licence.

† *Sect.* 4. By 10. Geo. 2. c. 28. ſ. 4. it is enacted, "That it ſhall and may be lawful to and for the ſaid lord chamberlain for the time being, from time to time, and when, and as often as he ſhall think fit, to prohibit the acting, performing, or repreſenting any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the ſtage, or any act, ſcene, or part thereof, or any prologue or epilogue; and in caſe any perſon or perſons ſhall for hire, gain, or reward, act, perform, or repreſent, or cauſe to be acted, performed, or repreſented, any new interlude, tragedy, comedy, opera, play, farce, or other entertainment of the ſtage, or any act, ſcene, or part thereof, or any new prologue or epilogue, before a copy thereof ſhall be ſent as aforeſaid with ſuch account as aforeſaid, or ſhall for hire, gain, or reward, act, perform, or repreſent, or cauſe to be acted, performed, or repreſented, any interlude, tragedy, comedy, opera, play, farce, or other entertainment of the ſtage, or any act, ſcene, or part thereof, or any prologue or epilogue, contrary to ſuch prohibition as aforeſaid; every perſon ſo offending ſhall, for every ſuch offence, forfeit the ſum of fifty pounds, and every grant, licence, and authority (in caſe there be any ſuch) by or under which the ſaid maſter or maſters, or manager or managers, ſet up, formed, or continued ſuch playhouſe, or ſuch company of actors, ſhall ceaſe, determine, and become abſolutely void, to all intents and purpoſes whatſoever."

No plays to be acted but in *Weſtminſter*, or places of his majeſty's reſidence.

† *Sect.* 5. By 10. Geo. 2. c. 28. ſ. 5. "Provided always, that no perſon or perſons ſhall be authorized by virtue

"of

" of any letters patent from his majeſty, his heirs, ſucceſſors, " or predeceſſors, or by the licence of the lord chamberlain " of his majeſty's houſhold for the time being, to act, re- " preſent, or perform for hire, gain, or reward, any inter- " lude, tragedy, comedy, opera, play, farce, or other enter- " tainment of the ſtage, or any part or parts therein, in any " part of *Great Britain*, except in the city of *Weſtminſter*, " and within the liberties thereof, and in ſuch places " where his majeſty, his heirs, or ſucceſſors, ſhall in their " royal perſons reſide, and during ſuch reſidence only; any " thing in this act contained to the contrary in any wiſe " notwithſtanding."

† *Sect.* 6. By 10. Geo. 2. c. 28. ſ. 6. it is further enacted, " That all the pecuniary penalties inflicted by this act for " offences committed within that part of *Great Britain* called " *England*, *Wales*, and the town of *Berwick upon Tweed*, ſhall " be recovered by bill, plaint, or information, in any of his " majeſty's courts of record at *Weſtminſter*, in which no " eſſoin, protection, or wager of law, ſhall be allowed; and " for the offences committed in that part of *Great Britain* " called *Scotland*, by action or ſummary complaint before " the court of ſeſſion or juſticiary there; or for offences " committed in any part of *Great Britain*, in a ſummary " way, before two juſtices of the peace for any county, " ſtewartry, riding, diviſion, or liberty where any ſuch " offence ſhall be committed, by the oath or oaths of one or " more credible witneſs or witneſſes, or by the confeſſion " of the offender; the ſame to be levied by diſtreſs and ſale " of the offender's goods and chattels, rendering the over- " plus to ſuch offender, if any there be, above the penalty " and charge of diſtreſs; and for want of ſufficient diſtreſs, " the offender ſhall be committed to any houſe of correction " in any ſuch county, ſtewartry, riding, or liberty, for any " time not exceeding ſix months, there to be kept to hard " labour, or to the common gaol of any ſuch county, " ſtewartry, riding, or liberty, for any time not exceeding " ſix months, there to remain without bail or mainprize; " and if any perſon or perſons ſhall think him, her, or " themſelves aggrieved by the order or orders of ſuch juſ- " tices of the peace, it ſhall and may be lawful for ſuch " perſon or perſons to appeal therefrom to the next general " quarter-ſeſſions to be held for the ſaid county, ſtewartry, " riding, or liberty, whoſe order therein ſhall be final and " concluſive; and the ſaid penalties for any offence againſt " this act ſhall belong, one moiety thereof to the informer " or perſon ſuing or proſecuting for the ſame, the other " moiety to the poor of the pariſh where ſuch offence ſhall " be committed." Penalties how recovered, &c.

Perſons acting in publick-houſes.

† *Sect.* 7. By 10. Geo. 2. c. 28. ſ. 7. it is further enacted, "That if any interlude, tragedy, comedy, opera, play, "farce, or other entertainment of the ſtage, or any act, "ſcene, or part thereof, ſhall be acted, repreſented, or performed, in any houſe or place where wine, ale, beer, or "other liquors, ſhall be ſold or retailed, the ſame ſhall be "deemed to be acted, repreſented, and performed, for gain, "hire, and reward."

Limitation of actions.

† *Sect.* 8. By 10. Geo. 2. c. 28. ſ. 8. it is further enacted, "That no perſon ſhall be liable to be proſecuted for any "offence againſt this act, unleſs ſuch proſecution ſhall be "commenced within the ſpace of ſix calendar months after "the offence committed; and if any action or ſuit ſhall be "commenced or brought againſt any juſtice of the peace, "or any other perſon for doing, or cauſing to be done, any "thing in purſuance of this act, ſuch action or ſuit ſhall "be commenced within ſix calendar months next after the "fact done; and the defendant or defendants in ſuch action

General iſſue.

"or ſuit ſhall and may plead the general iſſue, and give the "ſpecial matter in evidence; and if upon ſuch action or "ſuit a verdict ſhall be given for the defendant or defen-"dants, or the plaintiff or plaintiffs, or proſecutor ſhall "become nonſuit, or ſhall not proſecute his or their ſaid "action or ſuit, then the defendant or defendants ſhall

Treble coſts.

"have treble coſts, and ſhall have the like remedy for the "ſame as any defendant or defendants have in other caſes "by law."

† *Sect.* 9. By 17. Geo. 2. c. 5. "Common players of "interludes, and all perſons who ſhall for hire, gain, or "reward, act, repreſent, or perform, or cauſe to be acted, "repreſented, or performed, any interlude, tragedy, comedy, "opera, play, farce, or other entertainment of the ſtage, or "any part therein, not being authorized by law, ſhall be "deemed rogues and vagabonds."

Juſtices of the peace may, at the general or quarter ſeſſions, grant licences for the performance of plays, &c. under the reſtrictions herein ſpecified.

† *Sect.* 10. By 28. Geo. 3. c. 30. which recited the above-mentioned ſtatute 10. Geo. 2. c. 28. it is enacted, "That it ſhall and may be lawful to and for the juſtices of "the peace of any county, riding, or liberty, in general or "quarter ſeſſions aſſembled, at their diſcretion, to grant a "licence to any perſon or perſons, making application for "the ſame by petition, for the performance of ſuch trage-"dies, comedies, interludes, operas, plays, or farces, as now "are, or hereafter ſhall be acted, performed, or repreſented, "at either of the patent or licenſed theatres in the city of "*Weſtminſter*, or as ſhall, in the manner preſcribed by law, "have been ſubmitted to the inſpection of the lord cham-

"berlain

" berlain of the king's houſhold for the time being, at any " place within their juriſdictions, or within any city, town, " or place, ſituate within the limits of the ſame, for any " number of days, not exceeding ſixty days, to commence " within the then next ſix months, and to be within the " ſpace of ſuch four months as ſhall be ſpecified in the ſaid " licence, ſo as there be only one licence in uſe at the ſame " time within the juriſdiction ſo given, and ſo as ſuch place " be not within twenty miles of the cities of *London*, *Weſt-* " *minſter*, or *Edinburgh*, or eight miles of any patent or li- " cenſed theatre, or ten miles of the reſidence of his majeſty, " his heirs, or ſucceſſors, or of any place within the ſame " juriſdiction, at which, within ſix months preceding, a " licence under this act ſhall have been had and exerciſed, " or within fourteen miles of either of the univerſities of " *Oxford* and *Cambridge*, or within two miles of the out- " ward limits of any city, town, or place, having peculiar " juriſdiction; and ſo alſo as no licence under this act ſhall " have been had and exerciſed at the ſame place, within " eight months then next preceding; any law or ſtatute for " the puniſhment of perſons employed in theatrical repre- " ſentations to the contrary in any wiſe notwithſtanding."

† *Sect.* 11. By 28. Geo. 3. c. 30. ſ. 2. " Provided always, " That no ſuch licence ſhall be granted by the juſtices as " aforeſaid, to be exerciſed within any city, town, or place, " having peculiar juriſdiction, unleſs proof ſhall be made " that the majority of the juſtices acting for ſuch peculiar " juriſdiction have, at a publick meeting, ſigned their con- " ſent and approbation to the ſaid application, or unleſs an " expreſs condition ſhall be therein inſerted, that the ſame " ſhall not be valid and effectual until it ſhall have been " approved by the majority of the juſtices of ſuch peculiar " juriſdiction, at a meeting holden expreſsly for taking the " ſame into conſideration."

Licences not to be granted within any place having peculiar juriſdiction, without the conſent of the majority of the juſtices acting for ſuch juriſdiction.

† *Sect.* 12. By 28. Geo. 3. c. 30. ſ. 3. " Provided alſo, " that no ſuch licence ſhall be granted by the juſtices afore- " ſaid within any city, town, or place, unleſs notice ſhall " have been given by the perſon or perſons applying for " ſuch licence, at leaſt three weeks before ſuch application, " to the mayor, bailiff, or other chief civil officer or officers " of ſuch city, town, or place, of his or their intending " to make ſuch application."

No licence to be granted unleſs three weeks notice be given the mayor, &c. previous to application for a licence.

† *Sect.* 13. It has been decided, that the dancing of ballets at the Italian opera in the *Haymarket*, called the King's Theatre, is illegal, unleſs licenſed as required by the 10. Geo. 2. c. 28. although the manager of ſuch ballets

Gallini *v.* Laborie, 5. Term Rep. 242.

has a licence under 25. Geo. 2. c. 36. for performing muſical entertainments at another place; for the 10. Geo. 2. c. 28. extends to every ſpecies of ſtage entertainments.

† *Sect.* 14. It is ſaid alſo, that a place licenſed by the lord chamberlain purſuant to 10. Geo. 2. c. 28. does not require any licence from the other magiſtrates under 25. Geo. 2. c 36.

Per ASHHURST, *Juſtice*, 5. Term Rep. 244.

CHAP.

CHAPTER THE NINETY-FOURTH,

OF VAGRANTS.

I SHALL conſider,

1. Who ſhall be deemed vagrants.

2. How vagrants may be apprehended.

3. What reward may be given for apprehending vagrants,

4. In what caſe privy ſearch may be made.

5. In what manner they may be paſſed.

6. How they may be puniſhed.

7. Of harbouring vagrants.

8. Penalty on neglect of duty.

9. In what caſes perſons aggrieved may appeal.

As to THE FIRST POINT, *viz.* Who ſhall be deemed vagrants.

I ſhall conſider,

1. Who ſhall be deemed *idle and diſorderly perſons.*

2. Who ſhall be deemed *rogues and vagabonds.*

3. Who ſhall be deemed *incorrigible rogues.*

As to the firſt particular, *viz.* Who ſhall be deemed *idle and diſorderly perſons.*

† *Sect.* 1. By 17. Geo. 2. c. 5. ſ. 1. it is enacted, "That all perſons who threaten to run away and leave their wives or children to the pariſh; and all perſons who ſhall" Particular offences, and their puniſhments.

" ſhall unlawfully return to ſuch pariſh or place from " whence they have been legally removed by order of two " juſtices of the peace, without bringing a certificate from " the pariſh or place whereunto they belong; and alſo per- " ſons who, not having wherewith to maintain themſelves, " live idle without employment, and refuſe to work for the " uſual and common wages given to other labourers in the " like work in the pariſhes or places where they then are; " and alſo all perſons going about from door to door, or " placing themſelves in ſtreets, highways, or paſſages, " to beg or gather alms in the pariſhes or places where they " dwell; ſhall be deemed idle and diſorderly perſons."

Perſons neglecting to provide for their families, to be deemed idle and diſorderly.

† *Sect.* 2. By 32. Geo. 3. c. 45. ſ. 8. after reciting that " ſeveral perſons, by their wilful default and neglect, permit their wives and children to become chargeable to their reſpective pariſhes or townſhips," it is enacted, " That if it " ſhall be made appear to any two juſtices of the peace, that " any poor perſon ſhall not uſe proper means to get employ- " ment, or, if he is able to work, by his neglect of work, or " by ſpending his money in alehouſes or places of bad re- " pute, or in any other improper manner, ſhall not apply a " proper proportion of the money earned by him towards " the maintenance of his wife and family, by which wilful " default or neglect they, or any of them, ſhall become " chargeable to their pariſh or townſhip, he ſhall be conſi- " dered as an idle and diſorderly perſon, and be ſubject to " ſuch puniſhment, and in ſuch manner, as is directed for " idle and diſorderly perſons by the aforeſaid act."

As to the ſecond particular, *viz.* who ſhall be deemed *rogues and vagabonds*,

Offences of a higher nature.

† *Sect.* 3. By 17. Geo. 2. c. 5. ſ. 1. " It ſhall and " may be lawful for any perſon to apprehend and carry be- " fore a juſtice of the peace any ſuch perſons going about " from door to door, or placing themſelves in ſtreets, high- " ways, or paſſages, to beg or gather alms in the pariſhes or " places where they dwell; and if they ſhall reſiſt, or eſcape " from the perſon apprehending them, they ſhall be ſubject " to the ſame puniſhment as rogues and vagabonds are made " liable to by this act."

Other offences and their puniſhments.

† *Sect.* 4. By 17. Geo. 2. c. 5. ſ. 2. it is enacted, " That " all perſons going about as patent gatherers or gatherers " of alms, under pretences of loſs by fire or other caſualty; " or going about as collectors for priſons, gaols, or hoſ- " pitals; all fencers and bearwards; all common players of " interludes; and all perſons who ſhall, for hire, gain, or " reward,

" reward, act, repreſent, or perform, or cauſe to be acted, " repreſented, or performed, any interlude, tragedy, comedy, " opera, play, farce, or other entertainment of the ſtage, " or any part or parts therein, not being authorized by law; " all minſtrels, jugglers; all perſons pretending to be gyp- " ſies, or wandering in the habit or form of *Egyptians*, or " pretending to have ſkill in phyſiognomy, palmiſtry, or " like crafty ſcience, or pretending to tell fortunes, or uſing " any ſubtil craft to deceive and impoſe on any of his ma- " jeſty's ſubjects, or playing or betting at any unlawful " games or plays; and all perſons who run away and leave " their wives or children, whereby they become chargeable " to any pariſh or place; and all petty chapmen and pedlars " wandering abroad, not being duly licenſed or otherwiſe " authoriſed by law; and all perſons wandering abroad, and " lodging in alehouſes, barns, out-houſes, or in the open " air, not giving a good account of themſelves; and all " perſons wandering abroad and begging, pretending to be " ſoldiers, mariners, ſeafaring men, or pretending to go to " work in harveſt; and all other perſons wandering abroad " and begging; ſhall be deemed rogues and vagabonds with- " in the true intent and meaning of this act."

† *Sect.* 5. By 17. Geo. 2. c. 5. ſ. 3. it was provided, That the act ſhould not extend to " ſoldiers wanting ſub- " ſiſtence, having lawful certificates from their officers or " the ſecretary at war, or to mariners or ſeafaring men li- " cenſed by ſome teſtimonial or writing under the hand and " ſeal of ſome juſtice of the peace, ſetting down the time or " place of their landing or diſcharge, and the place to which " ſuch ſoldiers or mariners are to paſs, and the names of " the chief towns or places through which they are to paſs, " and limiting the time of ſuch their paſſage, while they " continue in the direct way to the place to which they are " to paſs, and during the time ſo limited." But by 32. Geo. 3. c. 45. ſ. 7. after reciting that ſuch permiſſion to beg is highly improper, it is enacted, " That every ſoldier and " mariner wandering abroad and begging, ſhall be deemed " a rogue and vagabond within the meaning of 17. Geo. 2. " c. 5." Proviſo.

† *Sect.* 6. By 17. Geo. 2. c. 5. ſ. 3. it is provided, " That nothing in this act contained ſhall extend to any " perſon or perſons going abroad to work at any lawful " work in the time of harveſt, ſo as he, ſhe, or they, carry " with him, her, or them, a certificate in writing, ſigned by " the miniſter and one of the churchwardens or chapel- " wardens, or one of the overſeers of the poor for the time " being, of the pariſh, chapelry, or place, where they ſhall " reſpectively

" reſpectively inhabit, declaring that he, ſhe, or they, hath
" or have a dwelling-houſe or place there, in which he, ſhe,
" or they inhabit."

Every perſon apprehended, having any implement for houſebreaking, or any offenſive weapon, with felonious intent, ſhall be deemed a rogue, &c. within 17. Geo. 2. c. 5.

† *Sect.* 7. By 23. Geo. 3. c. 88. it is enacted, " That if
" any perſon or perſons ſhall be apprehended, having upon
" him, her, or them, any picklock key, crow, jack, bit, or
" other implement, with an intent feloniouſly to break and
" enter into any dwelling-houſe, warehouſe, coach-houſe,
" ſtable, or outhouſe; or ſhall have upon him, her, or
" them, any piſtol, hanger, cutlaſs, bludgeon, or other of-
" fenſive weapon, with intent feloniouſly to aſſault any per-
" ſon or perſons; or ſhall be found in or upon any dwell-
" ing houſe, warehouſe, coach-houſe, ſtable, or out-houſe,
" or in any incloſed yard or garden, or area belonging to
" any houſe, with an intent to ſteal any goods or chattels;
" every ſuch perſon or perſons ſhall be deemed a rogue and
" vagabond within the intent and meaning of the ſtatute
" made in the ſeventeenth year of his late majeſty *George*
" the Second, intituled, *An Act to amend and make more ef-*
" *fectual the laws relating to rogues, vagabonds, and other idle*
" *and diſorderly perſons, and to houſes of correction.*"

Perſons who ſhall deal in tickets without taking out a licence purſuant to 22. Geo. 3. or fell chances, ſhall be deemed rogues and vagabonds.

† *Sect.* 8. By 27. Geo. 3. c. 1. ſ. 3. it is enacted,
" That all and every perſon and perſons who ſhall publicly
" or privately open, ſet up, continue, or keep, by himſelf or
" herſelf, or by any other perſon or perſons, any office or
" other place for buying, ſelling, or otherwiſe dealing in
" any tickets, or any ſhares of tickets, in any lottery now
" eſtabliſhed, or hereafter to be eſtabliſhed, by any *Britiſh*
" or *Iriſh* act of parliament, or for regiſtering the numbers
" of ſuch tickets, without the authority of a licence duly
" obtained for that purpoſe from the commiſſioners for ma-
" naging the duties upon ſtamped vellum, parchment, and
" paper, for the time being, in the manner in and by the
" ſaid recited act of the twenty-ſecond year of the reign of
" his preſent majeſty directed; and all and every perſon
" and perſons (except as herein-after is provided), who
" ſhall, by himſelf, herſelf, or themſelves, or by any other
" perſon or perſons, or for his, her, or their own account,
" or for or on the account, or as the ſervant, agent, or
" factor, of any other perſon or perſons, ſell, or cauſe or
" procure to be ſold, the chance or chances of any ſuch
" ticket or tickets, or any ſhare or ſhares thereof, for a day
" or part of a day, or any leſs time than the whole time of
" drawing in any ſuch lottery then to come; or inſure, or
" cauſe or procure any other perſon or perſons to inſure,
" for or againſt the drawing of any ſuch ticket or tickets;
" or ſhall receive any money or goods whatſoever, in con-
" ſideration

" ſideration of any agreement or promiſe to repay any ſum " or ſums of money, or to deliver the ſame, or any plate, " jewels, or other goods whatſoever, if any ſuch ticket or " tickets ſhall prove fortunate or unfortunate, or upon any " other chance or chances, event or events, contingency or " contingencies, relative or applicable to the drawing of any " ſuch ticket or tickets, whether as to the time of their " being drawn, or otherwiſe howſoever, ſhall be deemed " rogues and vagabonds within the true intent and meaning " of the ſaid recited act of the ſeventeenth year of the reign " of his ſaid late majeſty, and ſhall be puniſhable as ſuch " rogues and vagabonds accordingly."

† *Sect.* 9. By 32. Geo. 3. c. 53. ſ. 17. it is recited, That " whereas divers ill-diſpoſed and ſuſpected perſons and reputed thieves frequent the avenues to places of public reſort, and the ſtreets and highways, with intent to commit felony on the perſons and property of his majeſty's ſubjects there being; and although their evil purpoſes are ſufficiently manifeſt, the power of his majeſty's juſtices of the peace to demand of them ſureties for their good behaviour hath not been of ſufficient effect to prevent them from carrying their evil purpoſes into execution;" and enacted, " That it ſhall and " may be lawful for any conſtable, headborough, patrole, " or watchman, to apprehend every ſuch perſon, and con- " vey him or them before any juſtice of the peace; and if " it ſhall appear before the ſaid juſtice, upon the oath of " one or more credible witneſs or witneſſes, that ſuch per- " ſon or perſons is or are a perſon or perſons of evil fame, " and a reputed thief or thieves, and ſuch perſon or perſons " ſhall not be able to give a ſatisfactory account of himſelf " or themſelves, and of his or their way of living; and it " ſhall alſo appear, to the ſatisfaction of the ſaid juſtice, " that there is juſt ground to believe that ſuch perſon or " perſons was or were in ſuch avenue, ſtreet, or highway, " as aforeſaid, with ſuch intent as aforeſaid, every ſuch per- " ſon ſhall be deemed a rogue and vagabond within the in- " tent and meaning of the ſtatute made in the ſeventeenth " year of his late majeſty king *George* the Second, intituled, " *An Act to amend and make more effectual the laws relating to* " *rogues and vagabonds, and other idle and diſorderly perſons,* " *and to houſes of correction:* Provided always, That if any " perſon ſhall think himſelf aggrieved by the judgment of " ſuch juſtice as aforeſaid, ſuch perſon may appeal to the " juſtices of the peace at the next general or quarter ſeſſions " of the peace to be held for the county or place wherein " the cauſe of complaint ſhall have ariſen, ſuch perſon, at " the time of his conviction, entering into a recognizance, " with two ſufficient ſureties, conditioned perſonally to ap-

Conſtables, &c. may apprehend any ſuſpicious perſon, and convey him before a juſtice, and if it ſhall appear upon oath that he is a reputed thief, &c. he ſhall be deemed a rogue within 17. Geo. 2. c. 5.

Perſons thinking themſelves aggrieved may appeal to the quarter-ſeſſions.

" pear

" pear at the ſaid ſeſſions, to try ſuch appeal, and to abide
" the further judgment of the juſtices at ſuch ſeſſions aſ-
" ſembled; and in caſe ſuch conviction ſhall be affirmed at
" ſuch ſeſſions, the ſaid juſtices may adjudge ſuch perſon to
" be a rogue and vagabond, and proceed againſt ſuch perſon
" in the ſame manner as they might have done if ſuch
" rogue and vagabond had been committed to the houſe
" of correction until ſuch general or quarter ſeſſions: Pro-
" vided always, That no perſon convicted under this act
" ſhall thereby become liable to any other puniſhment than
" impriſonment to hard labour for a term not exceeding ſix
" months, taking into the computation any actual impri-
" ſonment ſuch perſon ſhall have ſuffered by his commit-
" ment until ſuch ſeſſion."

If conviction be affirmed, the juſtices may proceed as might have been done if the party had been committed.

Puniſhments not to exceed impriſonment to hard labour for ſix months.

As to the third particular, *viz.* Who ſhall be deemed *incorrigible rogues*.

† *Sect.* 10. By 17. Geo. 2. c. 5. ſ. 4. it is enacted, " That all end-gatherers offending againſt the ſtatute 13. " Geo. 1. c. 23. being convicted of ſuch offence, ſhall be " deemed incorrigible rogues."

Incorrigible rogues. 13. Geo. 1. c. 23.

† *Sect.* 11. By 13. Geo. 1. c. 23. ſ. 8. it is recited, " That whereas ſeveral abuſes have been committed in the woollen manufacture by perſons, commonly called *End-Gatherers*, going about the counties within this kingdom, and collecting, buying, and receiving, from the labourers employed in ſuch manufacture, ends of yarn, wefts, thrums, ſhort yarn, and other refuſe of cloth, drugget and other woollen goods, and goods mixed with wool, flocks and pinions only excepted;" it is therefore enacted, " That if " any ſuch perſon or perſons ſhall be found collecting, " buying, receiving, or any ways carrying or conveying, " ſuch ends of yarn, wefts, thrums, ſhort yarn, or other re-
" fuſe of cloth, drugget, or other woollen goods, or goods
" mixed with wool, it ſhall and may be lawful for any
" conſtable or other peace-officer, by warrant under the
" hand and ſeal of one or more juſtice or juſtices of the
" peace, to ſearch and examine ſuch perſon or perſons, his,
" her, or their bag or bags, or other convenience for carry-
" ing ſuch ends of yarn, wefts, thrums, ſhort yarn, or other
" refuſe of cloth, drugget, or other woollen goods, or goods
" mixed with wool; and if on ſuch ſearch ſuch conſtable
" or other officer ſhall find on or with any ſuch perſon or
" perſons any ſuch ends of yarn, wefts, thrums, ſhort yarn,
" or other refuſe of cloth, drugget, or other woollen goods,
" or goods mixed with wool, flocks and pinions only ex-
" cepted, that then ſuch conſtable or other officer ſhall carry
" ſuch

Conſtables may ſearch end-gatherers,

If on ſearch ends of yarn, &c. be found on them, they are to carry them before a juſtice.

" ſuch perſon or perſons before one or more juſtice or juſ-
" tices of the peace for the county, diviſion, city, or town
" corporate where ſuch perſon ſhall be ſo found and diſ-
" covered ſo offending; which perſon or perſons, upon due
" conviction of any of the ſaid offences, on oath of one or
" more credible witneſs or witneſſes, or by confeſſion of the
" party or parties, him, her, or themſelves, every ſuch perſon
" ſo offending ſhall be deemed and taken to be a dangerous
" and incorrigible rogue, vagrant, or perſon, and ſhall be
" liable to be deemed, taken, and puniſhed, as a dangerous
" and incorrigible rogue."

On conviction to be deemed incorrigible rogues.

12. Ann. ſtat. 2. c. 23.

† *Sect.* 12. By 17. Geo. 2. c. 5. ſ. 4. it is further enacted, " That all perſons apprehended as rogues and vagabonds, " and eſcaped from the perſons apprehending them, or re-
" fuſing to go before a juſtice or juſtices of the peace, or to
" be examined upon oath before ſuch juſtice or juſtices, or
" refuſing to be conveyed by any ſuch paſs as is herein-
" after directed, or knowingly giving a falſe account of
" themſelves on ſuch examination, after warning given them
" of their puniſhment; and all rogues or vagabonds who
" ſhall break or eſcape out of any houſe of correction be-
" fore the expiration of the term for which they were com-
" mitted or ordered to be confined by virtue of this act;
" and all perſons who, after having been puniſhed as rogues
" and vagabonds, and diſcharged, ſhall again commit any
" of the ſaid offences, ſhall be deemed incorrigible rogues
" within the true intent and meaning of this act."

Incorrigible rogues. 13. Geo 1. c. 23.

As to THE SECOND POINT, *viz.* In what manner vagrants may be apprehended.

† *Sect.* 13. By 17. Geo. 2. c. 5. ſ. 1. " Any perſon may
" apprehend and carry before a juſtice of peace any ſuch
" perſons going about from door to door, or placing them-
" ſelves in ſtreets, highways, or paſſages, to beg or gather
" alms in the pariſhes or places where they dwell."

† *Sect.* 14. By 17. Geo. 2. c. 5. ſ. 5. " If any perſon
" ſhall be found offending againſt this act, it ſhall and may
" be lawful for any perſon whatſoever to apprehend the per-
" ſon ſo offending, and to convey, or cauſe to be con-
" veyed, to ſome juſtice of the peace the perſons ſo appre-
" hended, to be proceeded againſt in ſuch manner as is
" herein-after directed: and in caſe any conſtable, or other
" ſuch officer, ſhall refuſe or neglect to uſe his beſt endea-
" vours to apprehend or convey to ſome juſtice of the
" peace any ſuch offender, it ſhall be deemed a neglect of
" duty in ſuch conſtable or officer, and he ſhall be puniſhed
" in

Any perſon may apprehend offenders.

Penalty on officers neglecting their duty.

" in ſuch manner as is herein-after directed: and in caſe " any other perſon, being charged by any juſtice of the " peace ſo to do, ſhall refuſe or neglect to uſe his beſt en- " deavours to apprehend and deliver to the conſtable or " ſuch other officer, or to carry ſuch offender before ſome " juſtice of the peace, where no conſtable or other ſuch " officer can be found, ſuch perſon ſo offending as afore- " ſaid, being thereof convicted upon view, or by the oath " of one or more credible witneſs or witneſſes, before one " or more juſtice or juſtices of the peace, ſhall forfeit the " ſum of ten ſhillings, to the uſe of the poor of the pariſh " or place wherein ſuch offence ſhall be committed; to be " levied by diſtreſs and ſale of the offender's goods, by war- " rant from any juſtice or juſtices; and the overplus (if " any), after the charges of ſuch diſtreſs ſatisfied, ſhall be " returned to ſuch offender."

As to THE THIRD POINT, *viz.* What rewards may be given for apprehending vagrants.

Five ſhillings reward for apprehending offenders.

† *Sect.* 15. By 17. Geo. 2. c. 5. ſ. 1. " It ſhall and " may be lawful for the ſaid juſtice, by warrant under his " hand and ſeal, to order any overſeer of the poor of the " pariſh or place where ſuch offender ſhall be apprehended, " to pay the ſum of five ſhillings to any perſon or perſons " in any ſuch pariſh or place ſo apprehending them, for " every offender ſo apprehended; which ſum ſhall be al- " lowed to ſuch overſeer in his account, he producing the " juſtice's order, and a receipt under the hand of the perſon " or perſons to whom ſuch ſum was paid: but if ſuch " overſeer ſhall neglect or refuſe to pay the ſaid ſum, the " ſaid juſtice, on oath thereof made, may, by warrant " under his hand and ſeal, order the ſame to be levied by " diſtreſs and ſale of the goods of ſuch overſeer; and " the overplus (if any), after the charges of ſuch diſtreſs " ſatisfied, ſhall be returned to ſuch overſeer, who in " ſuch caſe ſhall not be allowed the ſum ſo levied in his " account."

Penalty on overſeer not paying the reward.

Reward for taking up vagabonds, &c.

† *Sect.* 16. By 17. Geo. 2. c. 5. ſ. 5. " And in caſe any " perſon not being a conſtable, or ſuch other officer, ſhall " apprehend any ſuch rogue or vagabond, and ſhall deliver " him or her to a conſtable or other ſuch officer, or ſhall " convey, or cauſe him or her to be conveyed, to ſome juſ- " tice or juſtices of the peace, according to the directions " of this act; or if any conſtable or other ſuch officer ſhall " ſo apprehend and convey ſuch rogue or vagabond, it " ſhall and may be lawful for ſuch juſtice or juſtices to re- " ward any ſuch conſtable or other perſon, by making an " order

" order under hand and ſeal upon the high or chief con-
" ſtable, to pay the ſum of ten ſhillings to the perſon ſo
" apprehending him or her, within one week after demand,
" and producing ſuch order, and upon his giving a receipt
" for the ſame; and the ſame ſhall be allowed or paid by
" the treaſurer of the county, riding, diviſion, or liberty,
" to ſuch high or chief conſtable on his paſſing his ac-
" counts, and delivering ſuch order and receipt, and alſo
" his own receipt for the ſame to ſuch treaſurer; and the
" ſaid juſtices at the general or quarter ſeſſions ſhall allow
" the ſame to ſuch treaſurer in his accounts, upon his pro-
" ducing and delivering up the vouchers aforeſaid: and in
" cities, boroughs, towns corporate, and other places where
" there are no high or chief conſtables, ſuch petty conſta-
" bles and other officers ſhall pay or retain ſuch reward as
" aforeſaid, and be allowed what they ſhall ſo pay or re-
" tain by virtue of this act in their reſpective accounts,
" upon their producing and delivering up the like vouchers:
" and in caſe any high or chief conſtable, or where there is
" no high or chief conſtable, ſuch petty conſtable or other
" officer ſhall refuſe or neglect to pay ſuch reward on de-
" mand, it ſhall and may be lawful for ſuch juſtice or juſ-
" tices of the peace, by warrant under hand and ſeal, to
" levy the ſum of twenty ſhillings, by diſtreſs and ſale of
" the goods of ſuch officer, and thereout to allow to the
" perſon intitled thereto the ſaid reward of ten ſhillings,
" and ſuch other recompence for his trouble, loſs of time,
" and expences, as the ſaid juſtice or juſtices ſhall think fit;
" and the overplus (if any) ſhall be returned to ſuch officer
" upon demand."

Penalty on not paying the reward.

† *Sect.* 17. But by 32. Geo. 3. c. 45. ſ. 2. it is further enacted, " That no juſtice of the peace ſhall order any re-
" ward to be paid to any conſtable or other perſon for ap-
" prehending any rogue or vagabond, until ſuch rogue or
" vagabond ſhall have been puniſhed as hereby directed,
" and until the examination required by the aforeſaid act
" be actually tranſmitted to the next general or quarter ſeſ-
" ſions, there to be filed and kept on record."

No reward to be paid for apprehending rogues or vagabonds, until they ſhall have been puniſhed, &c.

As to THE FOURTH POINT, *viz.* In what caſes *a privy ſearch* may be made, and how the offender may be *examined* and dealt with.

† *Sect.* 18. By 17. Geo. 2. c. 5. ſ. 6. it is enacted, " That the juſtices of the peace for every county, riding,
" city, borough, town corporate, diviſion, or liberty, or
" any two of them, ſhall four times in the year at leaſt,
" or oftener (if need be), meet in their reſpective diviſions,

General privy ſearches to be made.

" and by their warrant command the conſtables or other " peace-officers of every hundred, pariſh, town, and ham- " let, in their ſeveral diviſions, who ſhall be aſſiſted with " ſufficient men of the ſame places, to make a general " privy ſearch in one night, throughout their ſeveral and " reſpective limits, for the finding and apprehending of " rogues and vagabonds; and every juſtice of the peace " ſhall alſo, on receiving information that rogues and vaga- " bonds are in any place within his juriſdiction, iſſue his " warrant to the conſtable, or other officer of ſuch place, to " ſearch for and apprehend ſuch rogues and vagabonds; " and ſuch rogues and vagabonds as they ſhall find and ap- " prehend upon ſuch ſearches, they ſhall cauſe to be brought " before any juſtice or juſtices of the peace of the ſame " county, riding, city, borough, town corporate, diviſion, " or liberty."

Juſtices to puniſh vagabonds, &c. taken up at privy ſearches. See 3. Burr. 1636.

† *Sect.* 19. By 17. Geo. 2. c. 5. ſ. 7. it is further enacted, " That where any rogues or vagabonds, ap- " prehended by any conſtable, or ſuch other officer or " perſon as aforeſaid, or upon ſuch ſearch as aforeſaid, ſhall " be brought before any juſtice or juſtices of the peace, it " ſhall and may be lawful for ſuch juſtice or juſtices, and he " or they are hereby required to inform himſelf or them- " ſelves, by the examination upon oath of the perſon or per- " ſons apprehended, or of any other perſon of the condition " and circumſtances of the perſon or perſons ſo appre- " hended, and of the pariſh or place where he, ſhe, or " they were laſt legally ſettled; the ſubſtance of which ex- " amination or examinations ſhall be put into writing, and " be ſubſcribed or ſigned by the perſon or perſons ſo ex- " amined; and the ſaid juſtice or juſtices ſhall likewiſe " ſign the ſame, and tranſmit it to the next general or " quarter ſeſſions of the peace to be holden for the ſame " county, riding, city, borough, town corporate, divi- " ſion, or liberty, there to be filed and kept on record; and " ſuch juſtice or juſtices of the peace ſhall, and are hereby " required to order all ſuch perſons ſo apprehended to be " publickly whipped by the conſtable, petty conſtable, " or tythingman, or ſome other perſon to be appointed " by ſuch conſtable, petty conſtable, or tythingman of " ſuch pariſh or place where ſuch perſons were appre- " hended; or to order ſuch perſons to be ſent to the houſe " of correction, there to remain until the next general " or quarter ſeſſions, or for any leſs time, as ſuch juſtice " or juſtices ſhall think proper."

Rex v. Brooke, 2. Term Rep. 190.

† *Sect.* 20. It has been decided, that a commitment by a juſtice of the peace for a time certain, as for fourteen days, by

by virtue of the above clauſe, is a commitment in execution, and therefore that the party is not intitled to be bailed.

† *Sect.* 21. It is alſo decided, that as ſuch a commitment is a commitment in execution, it muſt be preceded by a conviction. Rex v. Rhodes, 4. Term Rep. 220.

† *Sect.* 22. By 25. Geo. 2. c. 36. ſ. 12. it is enacted, "That it ſhall and may be lawful to and for any two or more of his majeſty's juſtices of the peace, in any county, city, or liberty, in caſe any perſon apprehended upon any general privy ſearch, or by virtue of any ſpecial warrant, ſhall be charged before them with being a rogue and vagabond, or an idle and diſorderly perſon, or with ſuſpicion of felony (although no direct proof be then made thereof), to examine ſuch perſon upon oath, not only as to the pariſh or place where he was laſt legally ſettled, but alſo as to his means of livelihood; the ſubſtance of which examination ſhall be put into writing, and be ſubſcribed or ſigned by the perſon ſo examined; and the ſaid juſtices ſhall likewiſe ſign the ſame, and tranſmit it to the next general or quarter ſeſſions of the peace to be holden for the ſame county, city, or liberty, there to be filed, and to be kept on record: and if ſuch perſon ſhall not make it appear to ſuch juſtices that he has a lawful way of getting his livelihood, or ſhall not procure ſome reſponſible houſekeeper to appear to his character, and to give ſecurity for his appearance before ſuch juſtices at ſome other day to be fixed for that purpoſe (in caſe the ſame ſhall be required), to commit ſuch perſon to ſome priſon or houſe of correction, for any time not exceeding ſix days; and in the mean time to order the overſeers of the poor, or one of them, of the pariſh or place in which ſuch perſon ſhall be apprehended, to inſert an advertiſement in ſome public paper, deſcribing ſuch ſuſpicious perſon, and any thing or things which ſhall have been found upon him, or in his cuſtody, and which he ſhall be ſuſpected not to have come honeſtly by, and mentioning the place to which ſuch perſon is committed, and ſpecifying the time and place when and where ſuch perſon is to be again brought before them to be re-examined; and if no accuſation ſhall be then laid againſt him, then ſuch perſon ſhall be diſcharged, or otherwiſe dealt with according to law."

Juſtices may examine on oath rogues, vagabonds, and other diſorderly perſons;

the examination to be tranſmitted to the ſeſſions.

Perſon not giving a ſatisfactory account, &c. to be committed,

and an advertiſement to be publiſhed deſcribing his perſon, and the things found on him.

As to THE FIFTH POINT, *viz.* In what manner vagrants may be *paſſed*, I ſhall conſider,

1. As to *Engliſh* vagrants.
2. As to *Scottiſh* vagrants.
3. As to *Iriſh* vagrants.
4. As to lunatic vagrants.
5. As to convicts diſcharged.
6. As to vagrants not paſſable.

As to the firſt particular, *viz.* In what caſes *Engliſh* vagrants may be paſſed.

Different ſorts of vagabonds, how to be paſſed.

† *Sect.* 23. By 17. Geo. 2. c. 5. ſ. 7. it is further enacted, "That after ſuch whipping or confinement, ſuch "juſtice or juſtices may, and are hereby impowered, if "they think convenient, by a paſs under hand and ſeal, in "the manner and form hereafter directed, to cauſe ſuch "perſons to be conveyed to the place of their laſt legal ſet-"tlement; but if it cannot be found, then to the place of "their birth; or if ſuch perſons, or any of them, be under "the age of fourteen years, and have any father or mother "living, then to the place of the abode of ſuch father or "mother, there to be delivered to ſome church-warden, "chapel-warden, or overſeer of the poor of ſuch pariſh, "town or place."

Duplicate of the paſs and examination to be filed at the next general or quarter ſeſſions.

† *Sect.* 24. By 17. Geo. 2. c. 5. ſ. 8. it is further enacted, "That ſuch juſtice or juſtices ſhall make, or cauſe to be "made, a duplicate of ſuch paſs and examination, and "ſign the ſame; and ſhall afterwards tranſmit the duplicate "of the ſaid paſs annexed to the examination, to the next "general or quarter ſeſſions of the peace, there to be filed "and kept on record; and ſhall annex the duplicate of the "examination to the paſs, and ſend it with the ſame; and "the ſaid paſs, examination, and duplicates thereof, ſhall "and may be read in any court of record in *England*, *Wales*, "or the town of *Berwick upon Tweed*, as evidence."

Juſtices to regulate the paſſes by giving the officers certificates.

† *Sect.* 25. By 17. Geo. 2. c. 5. ſ. 10. it is enacted, "That the juſtice or juſtices of the peace who ſhall make "the paſs, ſhall at the ſame time, with the ſaid paſs, cauſe "likewiſe to be delivered to the conſtable, or other officer "appointed to convey them, a note or certificate, aſcer-"taining

" taining how they are to be conveyed, by horſe, cart, or " on foot, and what allowance ſuch conſtable or other of- " ficer is to have for conveying them (according to the " rates or allowances appointed by the general or quarter " ſeſſions of the peace, as is herein-after directed.")

† *Sect.* 26. By 17. Geo. 2. c. 5. ſ. 11. it is enacted, " That the conſtable, or other officer, who ſhall receive " ſuch paſs and certificate, ſhall and is hereby required to " convey, or cauſe to be conveyed, the perſon or perſons " named in ſuch paſs, in ſuch manner, and in ſuch time, " as by the ſame paſs ſhall be directed, the next direct way " to the place where he, ſhe, or they are ordered to be ſent, " if ſuch place be in the ſame county, riding, diviſion, " corporation, or franchiſe, where the ſaid perſon or per- " ſons were apprehended; but if the place to which the " perſon or perſons ſo apprehended is or are to be ſent, lies " in ſome other county, riding, diviſion, corporation, or " franchiſe, he ſhall deliver the ſaid perſon or perſons " to the conſtable or ſuch other officer of the firſt town, " pariſh, or place, in the next county, riding, diviſion, " corporation, or franchiſe, in the direct way to the place " to which ſuch perſon or perſons is or are to be conveyed, " together with the ſaid paſs and duplicate of examination, " taking his receipt for the ſame; and ſuch conſtable or " other officer ſhall, without delay, apply to ſome juſtice " of the peace in the ſame county, riding, diviſion, cor- " poration, or franchiſe, who ſhall make the like certificate " as before (*mutatis mutandis*), and deliver it to the ſaid " conſtable or other officer, who ſhall and is hereby re- " quired with all ſpeed to convey the perſon or perſons " unto the firſt pariſh, town, or place in the next county, " riding, diviſion, corporation, or franchiſe, in the direct " way to the place to which ſuch perſon or perſons is or " are to be conveyed; and ſo in like manner from one " county, riding, diviſion, corporation, or franchiſe, to " another, till they come to the place to which ſuch " perſon or perſons is or are ſent; and the conſtable or " other officer, who ſhall deliver ſuch perſon or perſons to " the churchwarden or other perſon ordered to receive " them by ſuch paſs, ſhall at the ſame time deliver the ſaid " paſs, with the duplicate of examination, taking their re- " ceipt for the ſame; and if the churchwarden or other per- " ſon, who ſhall receive any perſon ſo ſent, ſhall think the " examination to be falſe, he is hereby impowered to carry " the perſon ſo ſent before ſome juſtice of the peace, who, " if he ſee cauſe, may commit ſuch perſon to the houſe of " correction till the next quarter ſeſſions, and the juſtices " there, if they ſee cauſe, may deal with ſuch perſon as an

The duty of officers with ſuch paſs and certificate. See 26. Geo. 2. c. 34. Poſt p. 551. pl. 30.

" incorrigible rogue; but the perſon ſo ſent ſhall not be " removed from the place to which ſent, but by order of " two juſtices, in the ſame manner as other poor perſons " are removed to the place of their ſettlement."

Perſons ſhall pay for their own paſſage if they are found able.

† *Sect.* 27. By 17. Geo. 2. c. 5. ſ. 12. it is enacted, " That it ſhall and may be lawful for any juſtice of the " peace, before whom any vagrants ſhall be carried, to " order ſuch vagrants to be ſearched, and their bundles to " be inſpected by the conſtable, tythingman, churchwarden, " or overſeer of the poor, in the preſence of the ſaid juſtice; " and if it ſhall appear that any ſuch vagrant ſhall be " found to have ſufficient wherewithal to pay for their paſ- " ſage, either in the whole or in part, to the pariſh to " which they belong, then the ſaid juſtice or juſtices ſhall " order ſo much of the money to be paid, or other effects " found with or upon ſuch vagrants, to be ſold, and em- " ployed for and towards the expence of taking up and " paſſing ſuch vagrants as aforeſaid, returning the overplus " (if any be), after deducting the charges of ſuch ſale, to " ſuch vagrants."

Juſtices to limit the rates *per* mile for paſſing vagrants, &c.

† *Sect.* 28. By 17. Geo. 2. c. 5. ſ. 16. it is enacted, " That the juſtices of the peace of any county, riding, city, " borough, town corporate, diviſion, or liberty, ſhall and " may at the general or quarter ſeſſions of the peace, from " time to time, limit, appoint, and direct what rates and " allowances *per* mile, or otherwiſe, ſhall be made for the " paſſing, conveying, or maintaining of rogues, vagabonds, " or incorrigible rogues, to be paſſed or conveyed as afore- " ſaid; and may likewiſe make ſuch other orders, rules, " and directions for the more regular proceeding or acting " therein, within their reſpective limits and juriſdictions, " as they in their diſcretion ſhall think proper; which " rates, allowances, orders, rules, and directions, ſhall from " time to time be obſerved and ſubmitted to by all juſtices " of the peace, conſtables, officers, and other perſons with- " in the ſame limits and juriſdictions reſpectively."

High conſtable to pay the rates to petty conſtables, &c.

† *Sect.* 29. By 17. Geo. 2. c. 5. ſ. 17. it is further enacted, " That in caſe any petty conſtable, or other ſuch " officer of any pariſh or place, ſhall bring to any high or " chief conſtable any ſuch certificate as aforeſaid, as ſhall " be given him by any juſtice or juſtices of the peace for " the proper county or place, aſcertaining how and for " what rates or allowances he ſhall be required to convey " any rogues, vagabonds, or incorrigible rogues as afore- " ſaid, together with a receipt or note from any conſtable " or other officer or perſon to whom the perſon or perſons

" ſo

" ſo to be conveyed was or were delivered, the ſaid high " or chief conſtable ſhall and may pay unto ſuch petty " conſtable, or other officer, the rates or allowances aſcer- " tained in and by ſuch certificate, and no more, taking " from ſuch petty conſtable or other officer ſuch certificate, " and his receipt for the ſame; and the ſaid high or chief " conſtable, ſhall be allowed the ſame by the treaſurer of " the county, riding, liberty, diviſion, corporation, or " franchiſe, on his paſſing his accounts, upon his pro- " ducing and delivering up ſuch certificate and receipt, and " giving his own receipt for the ſame to ſuch treaſurer; " and the juſtices at the general or quarter ſeſſions ſhall " allow the ſame to ſuch treaſurer in his accounts, upon " his producing and delivering up the vouchers aforeſaid: " and in caſe any high or chief conſtable ſhall refuſe or " neglect to pay the ſaid petty conſtable, or other officer " or perſon, the rates or allowances aſcertained in and by " ſuch certificate and receipt, on demand; it ſhall and " may be lawful for any juſtice or juſtices of the peace, by " warrant under hand and ſeal, to levy double the ſum " aſcertained by ſuch certificate, by diſtreſs and ſale of the " goods of ſuch high or chief conſtable, and thereout to " allow the ſaid petty conſtable, or other officer or perſon, " the ſum aſcertained in and by ſuch certificate and receipt, " and ſuch other recompence for his trouble, loſs of time, " and expences, as the ſaid juſtice or juſtices ſhall think fit; " and the overplus (if any) ſhall be returned to ſuch high or " chief conſtable upon demand; and in cities, towns-cor- " porate, and other places, where there is no high or chief " conſtable, ſuch petty conſtable or other officer ſhall be " allowed what they ſhall ſo pay purſuant to the directions " of ſuch certificate, in their reſpective accounts, upon " their producing and delivering up ſuch vouchers; or in " caſe any governor or maſter of a houſe of correction " ſhall deliver ſuch certificate and receipt to any treaſurer " as aforeſaid, ſuch treaſurer ſhall pay the rates therein aſ- " certained to ſuch governor or maſter of a houſe of cor- " rection, taking his receipt for the ſame, which ſhall be " allowed to ſuch treaſurer in his accounts, on his pro- " ducing and delivering up ſuch vouchers."

Penalty on the high conſtable's refuſing to pay, as directed by the juſtices warrant. Altered by 26. Geo. 2. c. 34. ſ. 2.

† *Sect.* 30. By 26. Geo. 2. c. 34. ſ. 2. it is enacted, " That all rogues, vagabonds, and incorrigible rogues ſent " by paſſes from one county, riding, diviſion, corporation, " or franchiſe, into any other county, riding, diviſion, cor- " poration, or franchiſe, ſhall be delivered to the conſtable " or other ſuch officer of the firſt town, pariſh, or place in " the next county, riding, diviſion, corporation, or franchiſe, " and ſhall be by ſuch conſtable or other ſuch officer con- " veyed forward in the manner by the ſaid act directed and

Vagrants paſſed from one county to another, how to be conveyed.

" preſcribed, and not otherwiſe; and that it ſhall and may " be lawful for the treaſurer of each county, riding, divi- " ſion, corporation or franchiſe, and he is hereby required " to pay to ſuch conſtable or other officer the charges of " conveying ſuch rogues, vagabonds, and incorrigible " rogues, upon ſuch conſtable or other officer producing " to him the certificate and ſuch other vouchers as are re- " quired by the ſaid act to be delivered to ſuch high or " chief conſtables; and the ſums ſo paid ſhall be allowed " by the juſtices of the peace to ſuch treaſurer in his ac- " count, on his producing the vouchers aforeſaid, toge- " ther with the receipt of the ſaid conſtable; any thing in " the ſaid act contained to the contrary notwithſtanding."

Rogues or vagabonds ordered to be conveyed by paſſes, agreeable to the recited act, to be publicly whipped, or confined in a houſe of correction, &c.

† *Sect.* 31. By 32. Geo. 3. c. 45. ſ. 1. it is enacted, " That when any juſtice of the peace ſhall order to be con- " veyed by a paſs, under his hand and ſeal, any rogue or " vagabond, according to the proviſions of the ſaid act, " ſuch rogue or vagabond ſhall be either publicly whipped, " or be ſent to the houſe of correction, there to remain " until the next general or quarter ſeſſions, or for any ſuch " leſs time as ſuch juſtice of the peace ſhall think proper; " provided that ſuch leſs time ſhall be at the leaſt for the " ſpace of ſeven days, and that ſuch juſtice of the peace " ſhall certify, in the paſs by which ſuch perſon ſhall be " ordered to be conveyed, that ſuch perſon has been actually " publicly whipped, or confined in the houſe of correc- " tion for at leaſt the ſpace of ſeven days: provided alſo " that no perſon ſhall be ſo whipped or impriſoned, and " conveyed by a paſs as a rogue or vagabond, who ſhall " not have committed an act of vagrancy within the true " intent and meaning of the ſaid act, and who ſhall not " have been convicted thereof."

No female vagabond to be whipped.

† *Sect.* 32. By 32. Geo. 3. c. 45. ſ. 3. it is further enacted, " That whenever any female ſhall be guilty of any " offence for which ſhe ſhall be convicted as a rogue and " vagabond, or incorrigible rogue, before any juſtice " of the peace, or the court of general or quarter ſeſſions, " in no caſe whatever ſuch juſtice or court of general " or quarter ſeſſions ſhall inflict the puniſhment of whip- " ping upon ſuch female rogue and vagabond, or incor- " rigible rogue; any law or ſtatute to the contrary in " any wiſe notwithſtanding."

Juſtices may order vagrants to be conveyed by maſters of houſes of correction, &c.

† *Sect.* 33. By 32. Geo. 3. c. 45. ſ. 5. IT IS RECITED, " That whereas the preſent mode of conveying vagrants in the cuſtody of a conſtable is frequently inſufficient, from the miſconduct and negligence of conſtables," and therefore

fore ENACTED, "That the juſtices of the peace, at the gene-
" ral or quarter-ſeſſions held for any county, riding, city,
" borough, town corporate, diviſion, or liberty, or any
" adjournment thereof, ſhall be empowered to make an
" order that all rogues and vagabonds apprehended in their
" reſpective counties, ridings, cities, boroughs, towns
" corporate, diviſions, or liberties, and who are ordered
" to be conveyed by paſs, ſhall be conveyed by the maſter
" of the houſe of correction or his ſervants, or by a con-
" ſtable, as ſuch juſtices at the general or quarter ſeſſions,
" or any adjournment thereof, ſhall think proper; and
" ſuch juſtices ſhall alſo be empowered to make an order,
" if they think proper, that all conſtables to whom rogues
" or vagabonds brought from another county, riding,
" city, borough, town corporate, diviſion, or liberty, are
" delivered, ſhall forthwith convey ſuch rogues and vaga-
" bonds to the neareſt houſe of correction in their county,
" riding, city, borough, town corporate, diviſion, or li-
" berty, to be afterwards forwarded by the maſter of the
" houſe of correction, or his ſervants, as aforeſaid, and
" according to the proviſions of the ſaid recited act."

Juſtices at ſeſſions to direct what rates ſhall be allowed for paſſing, &c. rogues, &c.

† *Sect.* 34. By 32. Geo. 3. c. 45. ſ. 6. it is further enacted, "That the juſtices of the peace of any county,
" riding, city, borough, town corporate, diviſion, or
" liberty, ſhall and may, at the general or quarter
" ſeſſions of the peace, from time to time, limit, appoint,
" and direct what rates and allowances *per* mile, or other-
" wiſe, ſhall be made for the paſſing, conveying, or main-
" taining of rogues, vagabonds, or incorrigible rogues, to
" be paſſed or conveyed as aforeſaid, and may likewiſe make
" ſuch other orders, rules, and directions for the more re-
" gular proceeding or acting therein, within their reſpective
" limits and juriſdictions, as they in their diſcretion ſhall
" think proper; which rates, allowances, orders, rules,
" and directions, ſhall from time to time be obſerved and
" ſubmitted to by all juſtices of the peace, conſtables, of-
" ficers, and other perſons within the ſaid limits and juriſ-
" dictions reſpectively."

Vagabonds, &c. to be ſet to work.

† *Sect.* 35. By 17. Geo. 2. c. 5. ſ. 19. it is enacted,
" That the pariſh or place to which any rogue, vagabond,
" or incorrigible rogue, ſhall be conveyed by paſs as afore-
" ſaid, ſhall take care to employ in work, or place in
" ſome work-houſe or alms-houſe, the perſon or perſons
" ſo conveyed to them, until he, ſhe, or they ſhall betake
" themſelves to ſome ſervice or other employment: and in
" caſe any ſuch perſon or perſons ſhall refuſe to work, or
" ſhall not betake themſelves to ſome ſervice or employ-
" ment,

" ment, the overſeers of the poor of the ſame pariſh or place, " or the major part of them, may cauſe ſuch perſon or " perſons to be carried before ſome juſtice of the peace, in " order to be ſent to the houſe of correction, there to be " kept to hard labour."

Act not to alter the manner of paſſing vagrants, as ſettled by ſpecial acts.

† *Sect.* 36. By 17. Geo. 2. c. 5. ſ. 27. it is further enacted, " That in all cities and towns where, by virtue of " ſpecial acts of parliament, the charge of paſſing vagrants " is to be defrayed in other manner than is by this act " directed, or where ſuch vagrants, by virtue of ſpecial " ſtatutes, are to be apprehended and conveyed to the places " whither they are to be ſent by any perſon or perſons, or " officers, other than thoſe named for that purpoſe in this " act, ſuch charge ſhall be borne and defrayed in ſuch cities " and towns in like manner as before the making of this " act; and the perſon or officer liable to ſuch ſervice in the " ſaid cities and towns, by virtue of the ſaid ſpecial acts of " parliament, ſhall continue liable, as if this act had never " been made; and if any perſon ſhall be delivered to a bea- " dle or conſtable within the city or liberties of the city of " *London*, to be conveyed on, as directed by this act, the " ſaid beadle or conſtable ſhall not deliver ſuch perſon in " any other precinct within the ſaid city or liberties, but in " the next county, as directed by this act."

As to the ſecond particular, *viz.* In what manner *Scotiſh* vagrants may be paſſed.

Regulations for paſſing vagrants into *Scotland*.

† *Sect.* 37. By 17. Geo. 2. c. 5. ſ. 13. it is further enacted, " That the conſtable or other officer of any pariſh " or place within the counties of *Cumberland*, *Northum-* " *berland*, *Durham*, or town of *Berwick upon Tweed*, ſhall, " and they are hereby authorized and required, upon any " perſon or perſons being delivered to them by a paſs and " examination, who ſhall have been apprehended within the " ſaid counties or town, or brought to them according to " the direction of this act, whoſe place of legal ſettlement is " in that part of *Great Britain* called *Scotland*, to deliver the " ſaid examination to the clerk of the peace for ſuch re- " ſpective county, to be kept among the records of the " ſeſſions of that county, and to convey, or cauſe to be con- " veyed, ſuch perſon or perſons, with the ſaid paſs, into the " next adjoining ſhire, ſtewartry, or place in that part of " the united kingdom; and to deliver him, her, or them to " ſome conſtable or other officer of the next pariſh, diſtrict, " or place within the ſaid ſhire, ſtewartry, or place, taking " his receipt for him, her, or them; and ſuch officer is " hereby required to receive ſuch perſon or perſons, and

" give

" give ſuch receipt, and to diſpoſe of him, her, or them, " according to law; and in caſe any ſuch vagrant, after " being ſo ſent and conveyed into that part of *Great Britain* " called *Scotland*, ſhall, after being ſo ſent as aforeſaid, be " found wandering, begging, or miſbehaving him or herſelf " within that part of *Great Britain* called *England*, contrary " to the true intent and meaning of this act; every ſuch " perſon ſo offending ſhall be deemed an incorrigible " rogue, and be puniſhed as incorrigible rogues are to be " puniſhed by this act."

As to the third particular, *viz.* In what manner *Iriſh vagrants* may be paſſed.

† *Sect.* 38. By 17. Geo. 2. c. 5. ſ. 14. IT IS RECITED, " That whereas divers vagrants have been conveyed from county to county, in order to be ſent to places in *Ireland*, the iſles of *Man*, *Jerſey*, *Guernſey*, or *Scilly* (their laſt legal ſettlement), but for want of authority to compel maſters of ſhips and veſſels to take them on board, in order to be carried thither at reaſonable rates, they may be very chargeable to the maritime counties, towns, and places in *England* and *Wales* where they may lie for ſuch exportation," AND ENACTED, " That all and every maſter and maſters of any " ſhip, or veſſel, or packet-boat, bound for *Ireland*, the iſles " of *Man*, *Jerſey*, *Guernſey*, or *Scilly*, ſhall, and they and each " of them is and are hereby required, upon warrant to him " or them directed under the hand and ſeal of a juſtice of " the peace of the county, town, or place where ſuch ſhip, " veſſel, or packet-boat ſhall lie, to take on board the ſame " ſuch vagrant and vagrants as ſhall be named and expreſſed " in the ſaid warrant, and convey him, her, or them to " ſuch place in *Ireland*, the iſles of *Man*, *Jerſey*, *Guernſey*, " or *Scilly*, as ſuch ſhip, veſſel, or packet-boat ſhall be bound " to, or ſhall arrive at; and for the charges thereof ſuch " maſter ſhall take, and the conſtable or perſon who ſerves " him with the ſaid warrant ſhall pay ſuch rate *per* " head, as the juſtices of the peace at their quarter-ſeſſions " ſhall from time to time appoint, for every ſuch vagrant ſo " brought and delivered to him; and ſuch maſter ſhall and " is hereby required, on the back of the ſaid warrant, to " ſign a receipt for the money ſo paid, and alſo for the " vagrant or vagrants ſo brought and delivered; which " warrant ſo indorſed ſhall then be produced to the juſtice " of the peace who ſigned and ſealed the ſame; and upon " his allowance thereof, under his hand, the money ſo paid " ſhall be repaid by the county, in ſuch manner as by this " act the money to be paid for conveying vagrants from " county to county is directed; and every maſter of ſuch " ſhip,

Regulations for paſſing vagrants into *Ireland*, &c.

Penalty on masters of ships refusing to take vagrants on board.

" ship, vessel, or packet-boat, neglecting or refusing to " receive on board, or to transport such vagrant or vagrants, " or to indorse and sign such receipt as aforesaid, shall " forfeit five pounds, to the use of the poor of the parish or " place where the offence shall be committed; to be levied " by distress and sale of the said ship, or any goods within " the same, by warrant under the hand and seal of any " justice of the peace for the same county, city, or town " corporate, returning the overplus (if any be) upon de- " mand, after the said penalty and charges of levying the " same are satisfied."

As to the fourth particular, *viz.* In what manner *lunatic vagrants* shall be passed.

† *Sect.* 39. By 17. Geo. 2. c. 5. s. 20. IT IS RECITED, " That whereas there are sometimes persons, who by lunacy, or otherwise, are furiously mad, or are so far disordered in their senses, that they may be dangerous to be permitted to go abroad;" and therefore ENACTED, " That it shall and

Lunaticks to be confined by warrant of justices.

" may be lawful for any two or more justices of the peace, " where such lunatick or mad person shall be found, by " warrant under their hands and seals, directed to the con- " stables, churchwardens, and overseers of the poor of the " parish, town, or place, or some of them, to cause such " person so to be apprehended, and kept safely locked up in " some secure place, within the county or precinct where " such parish, town, or place shall lie, as such justices shall, " under their hands and seals, direct and appoint; and (if " such justices find it necessary) to be there chained, if the " last legal settlement of such person shall be in any parish, " town, or place, within such county or precinct; and if " such settlement shall not be there, then such person shall " be sent to the place of his or her last legal settlement by a " pass, *mutatis mutandis*, as aforesaid, and shall be locked up " or chained, by warrant of two justices of the county or " precinct to which such person is so sent, in manner afore-

Goods and estates of lunaticks to be seized, to pay the charge of their maintenance:

" said; and the reasonable charges of removing, and of " keeping, maintaining, and curing such person during " such restraint (which shall be for and during such time " only as such lunacy or madness shall continue) shall be " satisfied and paid (such charges being first proved upon " oath) by order of two or more justices of the peace, " directing the churchwardens or overseers where any " goods, chattels, lands, or tenements of such person shall " be, to seize and sell so much of the goods and chattels, " or receive so much of the annual rents of the lands and " tenements as is necessary to pay the same, and to account " for what is so seized, sold, or received, to the next quar-

" ter-

" ter-ſeſſions: but if ſuch perſon hath not an eſtate to pay " and ſatisfy the ſame, over and above what ſhall be ſufficient " to maintain his or her family, then ſuch charges ſhall be " ſatisfied and paid by the pariſh, town, or place, to which " ſuch perſon belongs, by order of two juſtices, directed to " the churchwardens or overſeers for that purpoſe." otherwiſe at the charge of the pariſh.

† *Sect.* 40. By 17. Geo. 2. c. 5. ſ. 21. " Provided " always, that this act, or any thing therein contained, " ſhall not extend, or be conſtrued to extend, to reſtrain or " abridge the prerogative of the king, or the power or " authority of the lord chancellor, lord keeper, or com- " miſſioners of the great ſeal of *Great Britain* for the time " being, or the chancellor, or vice-chancellor of the county " palatine of *Lancaſter* for the time being, or of the cham- " berlain or vice-chamberlain of the county palatine of " *Cheſter* for the time being, touching or concerning ſuch " lunaticks, or to reſtrain or prevent any friend or relation " of ſuch lunaticks from taking them under their own care " and protection; any thing in this act contained to the " contrary notwithſtanding." Proviſo.

As to the fifth particular, *viz.* In what manner *diſcharged convicts* may be paſſed.

† *Sect.* 41. By 32. Geo. 3. c. 45. ſ. 4. it is enacted, " That any of his majeſty's judges at the aſſizes, and the " juſtices at the general or quarter ſeſſions, or any juſtice of " the peace, is and are hereby impowered to order, when- " ever he or they ſhall think proper, any convict, upon his " diſcharge from priſon, to be conveyed by paſs under hand " and ſeal, in manner and form directed by the aforeſaid act, " and according to the proviſions therein contained; and " the judge, juſtices, or juſtice aforeſaid, is or are alſo em- " powered to convey by paſs any perſon who ſhall be ac- " quitted at the aſſizes, or general or quarter ſeſſions, or " diſcharged by proclamation or otherwiſe, who ſhall of " himſelf or herſelf, or by any other perſon in his or her " behalf, apply to the court whereat he or ſhe has been " acquitted or diſcharged, or to any juſtice of the peace, to " be conveyed as aforeſaid; and the judge, juſtices, or juſ- " tice aforeſaid ſhall certify in ſuch paſs that the perſon ſo " conveyed was diſcharged from priſon, or a perſon ac- " quitted, or otherwiſe diſcharged, at the aſſizes or ſeſſions, " as the caſe may be; and ſuch convict, or perſon acquitted, " or diſcharged, ſhall pay no fee whatever for ſuch paſs." Convicts diſcharged from priſon, and perſons acquitted at aſſizes, &c. may be conveyed by paſſes, &c.

As

As to the ſixth particular, *viz.* In what manner *vagrants not paſſable* ſhall be dealt with.

How to order vagrants, whoſe ſettlements cannot be found.

† *Sect.* 42. By 17. Geo. 2. c. 5. ſ. 28. it is further enacted, "That where any perſons offending againſt this "act have been committed as aforeſaid, to the houſe of "correction, there to remain until the next general or "quarter ſeſſions, if, upon the examination of the perſons "ſo committed as aforeſaid, no place can be found to "which they may be ſent by a paſs as aforeſaid, the ſaid "juſtices ſhall, at the ſaid ſeſſions, order ſuch perſons to be "detained and employed in the houſe of correction, until "they can provide for themſelves, or until the juſtices of "the peace, at their general or quarter ſeſſions, can place "them out in ſome lawful calling, as ſervants, apprentices, "ſoldiers, mariners, or otherwiſe, either within this realm, "or his majeſty's colonies or plantations in *America*, which "the ſaid ſeſſions are impowered to do in ſuch manner as "they ſhall think fit."

Beggars with children how to be ordered.

† *Sect.* 43. By 17. Geo. 2. c. 5. ſ. 24. IT IS RECITED, "That whereas perſons are often found offending againſt this act, having children with them, whom they bring up in a diſſolute courſe of life, deſtructive to ſuch children, and prejudicial to the kingdom, in which a race of diſorderly perſons will increaſe, if ſuch children are ſuffered to remain with ſuch offenders;" and ENACTED, "That if "any ſuch child, above the age of ſeven years, ſhall be "committed to the houſe of correction as aforeſaid, it ſhall "and may be lawful for the juſtices at the quarter-ſeſſions, "if they ſee convenient, at any time before ſuch child be "diſcharged, to order ſuch child to be placed out in ſuch "manner as they ſhall think fit, as a ſervant or apprentice "to any perſon within their reſpective juriſdictions, who "is willing to take ſuch child, to ſerve ſuch perſon till ſuch "child ſhall arrive at the age of twenty-one years, or for "any leſs time, as to the ſaid juſtices ſhall ſeem meet: and "if any offender, who was found with ſuch child as afore-"ſaid, ſhall be again found with the ſame child (which was "ſo placed out as aforeſaid) offending againſt this act, ſuch "offender ſhall be deemed an incorrigible rogue."

How to order women delivered of children in the ſtreet.

† *Sect.* 44. By 17. Geo. 2. c. 5. ſ. 25. IT IS RECITED, "That whereas women wandering and begging, are often delivered of children in pariſhes and places to which they do not belong, whereby they become chargeable to the ſame;" and ENACTED, "That where any ſuch woman ſhall be ſo "delivered, and become chargeable, it ſhall and may be "lawful for the churchwardens or overſeers of the poor of "ſuch

" ſuch pariſh or place, to detain ſuch woman in their " cuſtody, until they can ſafely convey her to ſome juſtice " of the peace, who ſhall examine her, and commit her to " the houſe of correction, until the next general or quarter " ſeſſions, who may (if they ſee convenient) order her to be " publickly whipt, and detained in the houſe of correction " for any further time not exceeding ſix months; and upon " application by the churchwardens or overſeers of the " place where ſhe was ſo delivered, the juſtices at ſuch " ſeſſions ſhall order the treaſurer of the county or diſtrict " to pay them ſuch a ſum of money as ſhall be adjudged a " reaſonable ſatisfaction for the charges ſuch place has been " put to on ſuch woman's account; and if ſuch woman " ſhall be detained and conveyed to a juſtice as aforeſaid, " the child of which ſhe is delivered, if a baſtard, ſhall not " be ſettled in the place where ſo born, nor be ſent thither, " for want of other ſettlement, by a paſs, by virtue of this " act; but the ſettlement of ſuch woman ſhall be deemed the " ſettlement of ſuch child; any law to the contrary not- " withſtanding."

As to the SIXTH POINT, *viz.* In what manner vagrants may be puniſhed.

Having already deſcribed the puniſhment inflicted on *idle and diſorderly* perſons, and on ſuch *rogues and vagabonds* as may have been apprehended on a privy ſearch, I ſhall conſider the *further puniſhment* which may be inflicted on *vagabonds* and *rogues*.

† *Sect.* 45. By 17. Geo. 2. c. 5. ſ. 9. " Where any of- Power of juſ-
" fender againſt this act ſhall be committed, as aforeſaid, to tices over va-
" the houſe of correction, there to remain until the next gabonds and
" general or quarter ſeſſions; and the juſtices at ſuch ſeſ- incorrigible
" ſions ſhall, on examination of the circumſtances of the rogues.
" caſe, adjudge ſuch perſon a rogue or vagabond, or an
" incorrigible rogue; they may, if they think convenient,
" order ſuch rogue or vagabond to be detained and kept in
" the ſaid houſe of correction to hard labour for any fur-
" ther time not exceeding ſix months, and ſuch incorrigible
" rogue for any further time not exceeding two years, nor
" leſs than ſix months, from the time of making ſuch order
" of ſeſſions; and during the time of ſuch perſon's con-
" finement, to be corrected by whipping, in ſuch manner,
" and at ſuch times and places within their juriſdictions,
" as, according to the nature of ſuch perſon's offence, they
" in their diſcretion ſhall think fit; and ſuch perſon may
" (if the juſtices at the ſaid ſeſſions ſhall think convenient)
" afterwards be ſent away by ſuch paſs, *mutatis mutandis*, as

" afore-

" aforeſaid; and if ſuch perſon, being a male, is above the " age of twelve years, the juſtices at their ſeſſions may and " are hereby impowered, at any time before he is diſcharged " from the houſe of correction, to ſend him to be employed " in his majeſty's ſervice, either by ſea or land, if they ſhall " judge proper: and in caſe any ſuch incorrigible rogue, ſo " ordered by the ſaid general or quarter ſeſſions to be de- " tained and kept in the ſaid houſe of correction, ſhall, be- " fore the expiration of the time for which he or ſhe ſhall " be ſo ordered to be there detained and kept, break out or " make his or her eſcape from the ſaid houſe of correction, " or ſhall offend again in like manner; in every ſuch caſe, " every ſuch perſon ſhall be deemed and taken to be guilty " of felony, and being legally convicted thereof, ſhall and " may be tranſported for any term not exceeding ſeven years, " in the ſame manner as by the laws now in being other fe- " lons may be tranſported."

Ballie's Caſe, Caſes C. L.

† *Sect.* 46. It has been decided, that if a perſon be committed as a *rogue and vagabond* under 23. Geo. 3. c. 88. and break gaol, and on being committed as an *incorrigible rogue* under the above clauſe breaks gaol a ſecond time, and then commits an act of vagrancy as a *rogue and vagabond*, he may be indicted for felony and tranſported.

As to the SEVENTH POINT, *viz.* Reſpecting harbouring of vagrants.

Penalty for ſheltering vagabonds.

† *Sect.* 47. By 17. Geo. 2. c. 5. ſ. 23. it is RECITED, " That whereas perſons herein-before deſcribed to be rogues, vagabonds, or incorrigible rogues, are much encouraged in wandering about by the reception they too often meet with in villages and places where they are permitted to lodge in houſes, barns, or other outhouſes or buildings, by means whereof, and their falling ſick there, great expences are ſometimes brought upon pariſhes;" for remedy thereof it is ENACTED, " That if any perſon ſhall knowingly " permit or ſuffer any ſuch rogue, vagabond, or incorrigible " rogue, to lodge or take ſhelter in his or her houſe, barn, " or other outhouſe or buildings, and ſhall not apprehend " and carry ſuch rogue, vagabond, or incorrigible rogue, " before ſome juſtice of the peace, or give notice to ſome " conſtable or other ſuch officer ſo to do, ſuch perſon, " being thereof lawfully convicted, either on confeſſion or " upon oath of one or more credible witneſs or witneſſes, " before one or more of his majeſty's juſtices of the peace " where ſuch offence ſhall be committed, ſhall forfeit any " ſum not exceeding forty ſhillings nor leſs than ten ſhil- " lings, one moiety thereof to the informer, and the other " moiety

" moiety to the uſe of the poor of the pariſh or place where " ſuch offence ſhall be committed; to be levied by diſtreſs " and ſale of the goods and chattels of ſuch offender, by " warrant from ſuch juſtice or juſtices, returning the over- " plus (if any) upon demand, after ſuch forfeiture and " charges of ſuch diſtreſs ſhall be ſatisfied; and if any " charge ſhall be brought upon any pariſh or place by " means of any ſuch offence, the ſame ſhall be anſwered to " the ſaid pariſh or place by ſuch offender, and be levied " by diſtreſs and ſale of his or their goods and chattels as " aforeſaid; and if ſufficient diſtreſs cannot be found, ſuch " offender ſhall be committed to the houſe of correction " by the juſtice or juſtices, for any time not exceeding one " month."

As to THE EIGHTH POINT, *viz.* Penalty on officers for neglect of duty.

† *Sect.* 48. By 17. Geo. 2. c. 5. ſ. 22. " In caſe any " conſtable or other officer, or governor or maſter of any " houſe of correction, ſhall be defective, remiſs, or negli- " gent in his duty, in the execution of this act, in any caſe " for which no puniſhment is herein-before particularly " provided; or in caſe any perſon or perſons ſhall diſturb " or hinder the execution of this act, or ſhall reſcue any " perſon apprehended or paſſing from place to place by " virtue thereof, or ſhall be adviſing, aiding, or aſſiſting to " his or her eſcape, and ſhall be thereof convicted, upon " the oath of one or more credible witneſs or witneſſes, " before one or more juſtice or juſtices of the peace where " ſuch offence ſhall be committed (which oath the ſaid " juſtice or juſtices are hereby impowered to adminiſter), " the perſon or perſons ſo offending, for every ſuch of- " fence, ſhall forfeit any ſum not exceeding five pounds, " nor leſs than ten ſhillings, to the uſe of the poor of the " pariſh or place where ſuch offence ſhall be committed; " to be levied by diſtreſs and ſale of the offender's goods, " by warrant from ſuch juſtice or juſtices (returning the " overplus (if any be) upon demand, after the ſaid for- " feiture and charges of making and keeping the ſaid di- " ſtreſs ſhall be paid and ſatisfied; and if ſufficient diſtreſs " cannot be found, it ſhall and may be lawful to and for " one or more ſuch juſtice or juſtices to commit the per- " ſons ſo offending to the houſe of correction, there to be " kept to hard labour for any time not exceeding two " months."

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† *Sect.* 49. By 17. Geo. 2. c. 5. ſ. 26. "Any perſons "aggrieved by any act of any juſtice or juſtices of the peace "out of ſeſſions, in or concerning the execution of this act, "may appeal to the next general or quarter ſeſſions of the "county, riding, liberty, or diviſion, giving reaſonable no-"tice thereof, whoſe order thereupon ſhall be final."

Rex *v.* Sparrow.

† *Sect.* 50. It ſeems agreed, that if a party grieved appeal, he cannot, pending ſuch appeal, have a writ of *certiorari.*

Rex *v* Aldred, Michaelmas Term, 28. Geo. 3.

† *Sect.* 51. It is alſo ſaid, that notice of appeal ought to be given at the time of conviction.

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† *Sect.* 52. It ſeems alſo, that no appeal can be brought by *a pariſh* againſt a *vagrant paſs.*

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5. A battery is *any* injury actually done to the perſon of another; as ſpitting in his face, treading on his toes, joſtling him in a revengeful manner, 17. ſ. 2

6. Every battery includes an aſſault; therefore if the aſſault be ill laid and the battery good, it is ſufficient, 17

7. It is no battery for an officer to lay his hand gently upon the perſon he is about to arreſt, *ibid.*

8. How a battery may be juſtified, *ibid.* ſ. 3

9. *Son aſſault demeſne* may be taken advantage of on an indictment, as well as in an action; it may be given in evidence under not guilty in the firſt, and muſt be pleaded ſpecially in the latter, *ibid.*

10. How aſſaults and batteries are puniſhed, 17. ſ. 4

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14. Aſſaulting a privy-councillor, 18. ſ. 8

15. Aſſault for money won at play, 18. ſ. 9

16. Aſſaulting in the ſtreets, with intent to ſpoil clothes, 18. ſ. 10

17. To aſſault by ſhooting at another, 18. ſ. 11

18. Aſſaulting with intent to rob, 18. ſ. 12

19. Aſſaulting a maſter woolcomber, &c. 18. ſ. 13

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1. By ſtat. Weſt. 2. c. 49. none of the king's counſel, &c. ſhall receive any freehold while the thing is in plea, 408. ſ. 10

2. A BARRISTER receiving part of land *for his wages*, after the ſuit is determined, is not within 28. Edw. 1. c. 11. againſt champerty, 410. ſ. 19

3. A barriſter cannot juſtify indirect practices to influence a jury, 412. ſ. 5

4. A counſel, *having received his fee*, may lawfully ſet forth his client's cauſe to the beſt advantage, but he cannot give him money to maintain his ſuit, 401. ſ. 28

5. Barriſters are liable to puniſhment for any deceitful practice, 402. ſ. 31

6. By ſtat. Weſt. 1. c. 29. if they *beguile* the court or the party, they ſhall be *diſbarred* and impriſoned, &c. 402. ſ. 31

7. And counſellors not ſworn are as much within this act as ſerjeants, &c. 402. ſ. 32

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No baſtard children born in vagrancy ſhall gain a ſettlement by birth, or be ſent to the place where born for want of other ſettlement; but the ſettlement of the mother ſhall be the ſettlement of ſuch child, 558. ſ. 44

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1. A man may be bound to his good behaviour for haunting bawdy-houſes with women of bad fame, 14. ſ. 2

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1. A juſtice of the peace may commit one guilty of a forcible entry if he refuſe to give ſurety for his good behaviour, *Page* 31

2. The author of an obſcene writing may be bound to his good behaviour as a perſon of evil fame, 130. ſ. 9

3. By 34. Edw. 3. c. 1. juſtices of peace are required to take of all them that be not of good fame ſufficient ſurety for their good behaviour, 13

4. But this means of ſuch only as intend to break the peace, 13. ſ. 2

5. Or thoſe who by quarrelſome behaviour give juſt ſuſpicion of their readineſs to break the peace, 14

6. As for offences *contra bonos mores*, as frequenting bawdy-houſes, ſpeaking contemptuouſly of a magiſtrate, though not in the execution of his office; or of a conſtable or other inferior officer in the diſcharge of his duty, 14

7. But this ſurety cannot be required for barely calling another names, 14. ſ. 3

8. This power in the magiſtrate is diſcretionary, and he may take the ſurety of all whoſe behaviour involves them in the deſcription of perſons of *evil fame*, 14. ſ. 4

9. But if he commit for want of ſurety, he muſt ſhew the cauſe with convenient certainty, 14

10. Inſtances in which this ſurety has been taken, 15. (N) 1

11. A recognizance for ſuch ſurety may be forfeited by a commiſſion of the offence intended to be prevented by it, 15. ſ. 5

See CONSPIRACY, No. 20.

BOND.

See USURY, EXTORTION.

1. Thoſe who have an equitable intereſt in a bond may maintain another for the recovery of it. 397. ſ. 19

2. By 7. & 8. Will. 3. bonds given to procure the return of a member to parliament are void; and the giver thereof ſhall forfeit 300l. *Page* 76. ſ. 8

3. A bond by a deputy to pay a certain ſum at all events is bribery, and void, 75

4. But not a bond to pay half the profits, or a certain ſum out of the profits of the office for a deputation, 75. ſ. 5

5. The *obligee* may raſe out *libris* and inſert *marcis*, without being guilty of forgery, 104. ſ. 4

6. To make a bond for 500l. ſeem to be a bond for 5000l. by adding another cypher, was forgery at common law, 103. ſ. 2

7. But forging a bond containing a mere gift of perſonal chattels is not within 5. Eliz. c. 14. 109. ſ. 21

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How far, and in what manner, the copyright in books is preſerved, 299 to 311

BRAWLING.

See AFFRAYS.

1. By 5. & 6. Edw. 6. c. 4. whoever ſhall *brawl*, &c. in a church or churchyard, the ordinary, on proof by two witneſſes, may ſuſpend a layman *ab ingreſſu eccleſiæ*, and a clerk from *miniſtration*, 26. ſ. 24

2. This is a diſtinct and ſubſtantive offence; in the puniſhment of which the ſpiritual court ſhall not be prohibited, except they proceed to damages, 27 (N)

3. Cathedrals and their burying-places are within this ſtatute, *ibid.*

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1. In what manner the aſſize and making of wheaten and houſehold bread is regulated, 327 to 344

2. In what manner bread may be made when no aſſize is ſet, 344 to 349

3. As to the making of ſtandard wheaten bread, *Page* 349 to 354

BREWERS.

1. No brewer ſhall conſpire to raiſe the price of victuals, 320. ſ. 11

2. No brewer ſhall uſe any molaſſes, coarſe ſugar, or any extract or compoſition thereof, in the making beer, &c. 354. ſ. 77

3. Or receive into his cuſtody any quantity of the ſaid materials exceeding 10l. on penalty of 100l. 354. ſ. 78

4. Nor ſhall he uſe any broom, wormwood, or other bitter, inſtead of hops, on pain of 20l. 354. ſ. 79

5. Nor any ſugar, honey, foreign grains, Guinea pepper, eſſentia bine, cocculus Indicus, &c. on pain of 20l. 355. ſ. 80

6. By 2. Geo. 3. c. 14. no brewer, &c. ſhall be ſued for advancing the price of beer in a reaſonable degree, and if he ſhall mix any ſmall-beer or worts with ſmall, he ſhall forfeit 50l. 355

BRIDGES.

1. None ſhall make bridges except by cuſtom, 257 *notis*

2. Perſons bound to repair them muſt make them of ſufficient height and ſtrength, according to the courſe of the water, 256. ch. 77

3. No one ſhall be deemed guilty of treſpaſs for entering lands or laying down materials on the grounds of another for ſuch purpoſe, 259. c. 77

4. The repair of bridges lies upon the county, unleſs ſuch part as is within a franchiſe, if there be no ſpecial tenures or preſcriptions to the contrary, 257

5. A corporation or other perſon may be liable either by tenure or preſcription, 257. ſ. 2

6. But a man is not bound to repair a new bridge built by himſelf for the common good, 257

7. But a tenant at will of a houſe adjoining a bridge is bound to repair his houſe in reſpect of his poſſeſſion, *Page* 258 (N) 1

8. And if a particular diſtrict bound to repair one kind of bridge, build another kind, of more general utility, the county ſhall repair it, 258

9. Any individual who is liable to repair a bridge may be made a defendant for not repairing, and ſhall pay ſuch fine as ſhall be aſſeſſed; but he may have a remedy over againſt thoſe who are equally liable for their contribution, 258. ſ. 3.

10. A plea that the defendant is not bound to repair is bad, unleſs it ſhew who is ſo bound, 258. ſ. 4

11. If the defendant traverſe the charge of repair, the attorney-general may take a traverſe upon the traverſe, and *ſurmiſe*, that the defendants are bound to repair, but no inhabitant ſhall be upon the jury, 259. ſ. 5, 6

12. The indictment muſt allege the *kind* of bridge, and if the obligation ariſes from *tenure*, it muſt ſtate where *the lands* lie, 259

13. By 22. Hen. 8. c. 5. the ſeſſions are empowered to enquire, hear, and determine annoyances of broken bridges in the highways, and to order their repair, 259. ſ. 7

14. Where it cannot be known who are bound to repair, bridges without a city or town corporate ſhall be repaired by the county; if within, then by the city or town; and if the bridge ſhall be part in one city or county and part in another, each ſhall repair the part accordingly, 259. ſ. 8

15. The mode in which aſſeſſments ſhall be made and levied for the repair of bridges. The manner in which the juſtice may iſſue proceſs, &c. 260, 261

16. Juſtices may allow the collectors reaſonable charges, 261. ſ. 12

17. How

17. How the highways at the ends of bridges, within the ſpace of 300 feet, ſhall be kept in repair, *Page* 262. ſ. 13

18. No private bridges are within the purview of the above act, 262. ſ. 14

19. How far the power of the juſtices extends under this act, 262. ſ. 15

20. Who ſhall be conſidered as inhabitants within the words of the act, 262. ſ. 16

21. The aſſeſſment to be made diſtinctly on each inhabitant, 263. ſ. 17

22. From which no inhabitant can claim any exemption, not even by charter or act of parliament, 263. ſ. 18

23. It is queſtionable whether a borough which hath no bridge be not liable to contribute to the repair of the county-bridges, 263. ſ. 19

24. By 1. Ann. c. 18. the ſeſſions, upon any decayed bridge being preſented, may levy a tax for the repair, 263. ſ. 20

25. All queſtions concerning the repair of bridges ſhall be determined in the county where they lie, 264

26. Except the right of repair either to private perſons or pariſhes ſhall come in queſtion, *ibid.*

27. But a *certiorari* lies upon an order of juſtices concerning a *private bridge*, 265 (N) 2

28. And the act of *Queen Anne* extends only to bridges which the county is bound to repair, 265 *notis*

29. The 12. Geo. 2. c. 29. authorizes the levying of the county-rate, and orders that the repairs of bridges ſhall be paid therefrom, 265. ſ. 27

30. But no part of the money ſhall be applied to the repair of bridges, until preſentment by the grand jury at the aſſizes or ſeſſions, 265, 266

BRIBERY.

1. Definition of this offence at common law, c. 67

2. By 12. Rich. 2. c. 2. the great officers of ſtate ſhall be ſworn not to appoint any of the king's officers for reward, *Page* 74

3. By 4. Hen. 4. c. 5. no ſheriff ſhall *let* his bailiwick to farm, *ibid.*

4. By 5. & 6. Edw. 6. c. 16. whoever ſhall procure an office by bribery ſhall be diſabled to hold, &c. *ibid.*

5. No office in fee is within this act; but the office of chancellor, regiſter, or commiſſary of the eccleſiaſtical courts, are, 74. ſ. 4

6. No perſon once diſabled can be again reſtored by any grant or diſpenſation, 75. ſ. 5

7. A colourable bond by a deputy of an office is void; but a bond to pay half the profits or a ſum certain, for a deputation, is good, 75

8. The above ſtatute does not extend to the plantations, *ibid.*

9. Anciently, bribery in a Judge was puniſhed as treaſon; and now all bribery is liable to deprivation, fine, and impriſonment, 75. ſ. 6

10. The *Earl of Middleſex* fined 50001. for bribery, 75. ſ 7

11. An attempt to influence another by means of a bribe is highly criminal; and offering money to a privy-counſellor for an office is puniſhable by information, *ibid.* (N)

12. By 7. & 8. Will. 3. c. 7. all ſecurities to procure a ſeat in parliament is void; and the giving of ſuch a bribe incurs a penalty of 3001. 76. ſ. 8

13. But if the election is void, no action lies for this penalty, 76 *notis*

14. By 2. Geo. 2. c. 24. candidates or voters giving or receiving a bribe for a vote at elections forfeit 5001. &c. 76. ſ. 9

15. But if the offender, within twelve months, diſcover another offender, ſo as *he* be convicted, the diſcoverer not having himſelf been previouſly convicted,

victed, he is indemnified; but no profecution ſhall be after two years, *Page* 76. ſ. 10

16. This ſtatute does not take away the common-law proceſs by indictment or information, 76. (N) 4

17. But the Court will not grant information, except on ſpecial grounds, till after the two years are expired, 77 *notis*

18. And perhaps they will remit ſentence on an indictment upon a recognizance to appear at the end of the two years, *ibid.*

19. But after that time they will not ſuſpend the ſentence, becauſe one of the witneſſes is indicted for perjury, *ibid.*

20. Nor on affidavits that the offender was a diſcoverer, *ibid.*

21. Nor will they grant a new trial, becauſe a witneſs was a party in the offence, *ibid.*

22. But they will in order to aſcertain who was the diſcoverer, *ibid.*

23. Having obtained a verdict is not concluſive proof of being a diſcoverer, *ibid.*

24. For a perſon who makes an affidavit, on which another obtains a verdict, may be the true diſcoverer, *ibid.*

25. A verdict only when completed by a judgment is a conviction, and the Court will grant leave to complete it, and it will then relate back to the original diſcovery, *ibid.*

26. A colourable note, or laying a wager, is bribery within the act, although the receiver voted for the oppoſite party, 76. ſ. 10

27. The bribery precludes the candidate from denying the right of the elector to vote, *ibid.*

28. A man may be guilty, although he has not then declared himſelf a candidate, *ibid.*

29. It is not neceſſary that the party bribed ſhould be in fact an elector, *ibid.*

30. The declaration for the penalty muſt ſtate the ſort of bribe that was given or received, and not allege generally "that he took a gift or reward," *Page* 77. (N)

31. This defect not helped by verdict, *ibid.*

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See DICE.

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2. The playing with them is, in itſelf, lawful and innocent, *ibid.*

3. How far gaming by cards, dice, &c. is reſtrained, 493

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1. A *certiorari* from the king's bench, is a *ſuperſedeas* to reſtitution in a forcible entry, 64. ſ. 62

2. By 1. Ann. c. 18. concerning the repair of bridges, no *certiorari* ſhall be allowed, 265 *notis*

3. Nor on 25. Geo. 2. c. 36. againſt bawdy-houſes, 141. ſ. 10

4. Nor on 30. Geo. 2. c. 21. for preſerving fiſh in the Thames, 362

5. Nor

5. Nor on 30. Geo. 2. c. 24. for reſtraining gaming in public-houſes, *Page* 291

6. Nor on 31. Geo. 2. c. 29. for the regulation of bread, 342

7. Nor on 10. Geo. 3. c. 18. againſt dog-ſtealers, 467

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1. To challenge another, to carry a challenge, or to provoke a challenge, is a very high offence, puniſhable by fine and impriſonment, 19. ſ. 3

2. By 9. Ann. c. 14. ſ. 8. to challenge another on account of money won at play, incurs a forfeiture of goods and two years impriſonment, 20

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See MAINTENANCE. EMBRACERY. BUYING A PRETENDED TITLE.

1. Champerty is the unlawful maintenance of a ſuit, in conſideration of ſome bargain to have part of the thing in diſpute, ch. 84

2. The ſeveral opinions which have been holden on the nature of this offence, 407 to 411

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A maſter may accompany his *domeſtic chaplain* to retain Counſel, or to engage Counſel, and may ſtand by him at his trial without being guilty of maintenance, &c. 400. ſ. 31

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See HOMICIDE.

The bare ſolicitation of chaſtity is not an indictable offence, ch. 74

CHEATS.

1. Cheating conſiſts in defrauding or endeavouring to defraud another of his known right, by means of ſome artful device, contrary to the plain rules of honeſty, ch. 71

2. But an impoſition effected by means of a *bare naked lie*, without the intervention of any artful contrivance, is not cheating, puniſhable criminally. *Page* 113. ſ. 2

3. Inſtances given, 114

4. Common cheating is puniſhable with fine and impriſonment, 114. ſ. 3

5. By 33. Hen. 8. c. 1. whoever ſhall falſely and deceitfully obtain the goods, &c. of another by colour and means of any *falſe privy token*, ſhall be corporally puniſhable in any degree under death, as pillory, &c. 114. ſ. 4

6. The offence may be tried at ſeſſions; and the juſtices may convene ſuſpected offenders, 115. ſ. 5

7. An inſtance of an offender being fined under the act: *ſed vide Coke's* opinion (3. Inſt. 123.) that it cannot be done, 116. ſ. 6

8. By 30. Geo. 2. c. 24. whoever ſhall *by falſe pretences* obtain the property of another, *with intent* to cheat and defraud any perſon, he ſhall be publicly whipped, or fined and impriſoned, or tranſported, as the Court ſhall think fit, 116. ſ. 7

N. B. No *certiorari* lies on this ſtatute, 117. ſ. 15

9. Caſes on theſe ſtatutes, 116, 117

10. By 16. Car. 2. whoever ſhall *win* any ſum or valuable thing by any fraud or ill practice, ſhall forfeit treble value, &c. &c. 117. ſ. 16

11. By 9. Ann. c. 14. the offender ſhall forfeit five times the value, be deemed infamous, and ſuffer corporal puniſhment, as in caſes of perjury, 117, 118

12. But the judgment can only be *quòd convictus eſt*, and the fine muſt be recovered by action, 117 *notis*

CHURCHWARDENS.

1. By 3. Car. 1. c. 3. the penalties for keeping alehouſes without licence, to be

be levied by the churchwardens to the uſe of the poor, *Page* 289

2. By 4. Jac. 1. c. 5. the churchwardens oath enlarged to preſent offences contrary to 1. Jac. 1. c. 9. for reſtraining tippling, 291

3. They may whip boys for playing in the church, or pull off the hats of thoſe who refuſe to take them off, or may gently turn out diſturbers of divine ſervice, without incurring the penalties of 5. & 6. Edw. 6. c. 4. 27. ſ. 29

COALS.

1. The coal buſhel ſhall be round, and 19½ inches in diameter, and contain one Wincheſter buſhel and one quart of water, 367

2. All ſea-coal brought into the *Thames*, ſhall be ſold by the chaldron of 36 buſhels; and coals ſold by weight, ſhall in proportion be 112lb. *avoir-dupois* to every cwt. 367. ſ. 132

3. Any three juſtices may ſet the price of ſea-coal, and if any perſon ſhall refuſe to ſell, they may enter the place and ſell the ſame, 367. ſ. 133

COMPUTATION.

An aſſurance for payment of money with intereſt, ſhall be computed by calendar months, for otherwiſe it would be uſury, 384. ſ. 56

CONCEALMENT.

1. Concealment, or procuring the concealment of felony, whether by common law or by ſtatute, is miſpriſion, 1. ſ. 2

2. The concealment of *treaſure trove* is miſpriſion, 1 *notis*

3. By 3. Edw. 1. c. 9. ſheriff, coroner, or bailiff, &c. who ſhall conceal, conſent, or procure to conceal the felonies done in their liberties, ſhall be fined and impriſoned at the king's pleaſure, 1. ſ. 3

4. By 3. Hen. 7. c. 1. juſtices may ſummon a jury to enquire of the concealments made by other inqueſts, &c. *Page* 2. ſ. 3

CONSPIRACY.

1. A definition of conſpiracy, c. 72

2. Barely to conſpire to indict another maliciouſly, whether any thing be done in proſecution of ſuch intent, or not, is conſpiracy, 119. ſ. 2.

3. But a bare conſpiracy to indict another, will not maintain *the writ of conſpiracy*, 120

4. Nor can *the writ* be brought, unleſs the party indicted be acquitted, *ibid.*

5. But, perhaps, *a writ* may be formed to meet the caſe of a perſon falſly indicted, who has not been acquitted, *ibid.*

6. And it is certain that an *action on the caſe*, in the nature of ſuch a writ, doth lie for a malicious proſecution, although it do not proceed to an indictment, 121

7. And an indictment or information may be brought for conſpiracies within the ſtatute of *Edward the Firſt*, 121

8. In an action for a malicious proſecution, the plaintiff muſt ſhew that the original ſuit is at an end, 121 *notis*

9. It is ſafeſt to form an indictment at common law for a malicious accuſation, 12

10. And for this offence a man may be not only ſentenced to THE PILLORY, but branded, *ibid.*

11. At common law, all confederacies, wrongfully to prejudice a third perſon, are criminal, *ibid.*

12. The offence conſiſts in the conſpiracy; and it is criminal to conſpire to do a lawful act, 122 *notis*

13. The fact of conſpiring need not be directly proved; it may be collected from collateral circumſtances, 122 *notis*

14. And

14. And if the parties concur in doing the act, although unacquainted with each other, it is conspiracy, *Page* 122 *notis*

15. The insufficiency of the indictment, want of jurisdiction in the court, or the improbability of injuring the defendant, is no justification in conspiracy for a malicious prosecution, 122. s. 3

16. Nor is it any plea, that the party only intended to give evidence in the regular and legal course of justice, 122. s. 4.

17. But no juror is liable to any prosecution, in respect to any verdict given by him, either upon a grand or petit jury, 123. s. 5

18. Judges of record also are freed from all prosecution for any thing done by them as Judges, 123. s. 6

19. Yet if a Judge turn solicitor, tampers with witnesses, or labour jurors, he may be punished, 124

20. Conspiracy, upon the statute, must be both false and malicious, 124. s. 7

21. Therefore, if the defendants in a writ of conspiracy can prove a probable cause, they shall be discharged, 124

22. But *quære*, if it can be given in evidence on the general issue, *ibid.*

23. One person cannot be guilty of conspiracy upon the statute, 124. s. 8

24. Therefore husband and wife cannot be indicted alone, for they are but one; and the acquittal of all but one is an acquittal of all, *ibid.*

25. But an action on the case, in the nature of a writ of conspiracy, may be brought against one only, 125

26. And if brought against several, and all but one be acquitted, yet judgment may be given against him, *ibid.*

27. A conspirator convicted at the suit of the party, shall pay damages, and have fine and imprisonment, 125. s. 9

28. When at the suit of the king, *the villainous judgment* was formerly given, 125

29. But this is obsolete; and the punishment is pillory, fine, imprisonment, and surety for behaviour, *Page* 125 *notis*

30. Quarter-sessions have jurisdiction in conspiracy, *ibid.*

31. On motion to arrest judgment, the defendant must be personally present, *ibid.*

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3. By 16. Car. 2. c. 7. if any perſon ſhall defraud another by playing at dice, &c. or by betting on the ſide of ſuch as do play, he ſhall forfeit treble what is won, 117. ſ. 16

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1. It is fatal to an indictment of forcible entry to allege a *diſſeiſin* of ſuch eſtates of which a perſon cannot be diſſeiſed, as a leaſe for years, a copyhold, &c. 41. ſ. 39

2. So, alſo, if it ſtate the diſſeiſin to be of land *adtunc et adhuc exiſtens liberum tenementum I. S. &c.* *ibid.*

3. But *quære*, if this repugnancy may not be reconciled by intending that the diſſeiſee might re-enter after the diſſeiſin and before the indictment, 42. ſ. 39

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2. but

2. But not thoſe who have lands next adjoining to ſuch lands, unleſs by preſcription, *Page* 200. ſ. 149

3. By 13. Geo. 3. c. 78. ſ. 30. all occupiers of lands are liable to be rated toward the making tunnels for ſcouring of ditches, 168. ſ. 47

4. Surveyors of the highways may order all nuſances in, or obſtructions of ditches, &c. to be removed, on perſonal notice thereof to the occupier, and if not removed within twenty days, the ſurveyor ſhall remove them at the expence of the occupier, who ſhall pay one penny a foot, &c. 189. ſ. 108

5. The poſſeſſors of land next adjoining every highway ſhall make ditches, &c. of a ſufficient depth and breadth for keeping the highways dry, and ſhall ſcour and cleanſe the ſame, and make ſufficient trunks, tunnels, &c. on pain of 10s. after ten days notice by the ſurveyor, 201. ſ. 152

6. The ſurveyor, by order of one juſtice, ſhall make new ditches and drains in and through the adjoining lands, or any other lands, if neceſſary; and to keep ſuch ditches, &c. ſcoured, &c. the ſurveyor, with proper workmen, may go upon the lands, 201. ſ. 154

7. Surveyors ſhall make proper trunks, &c. over ſuch ditches, for the convenient uſe of the lands, keep the ſame in repair, and make ſatisfaction to the owner for the damage ſuſtained thereby, 202

8. If any perſon, in making, cleanſing, or ſcouring the ditches, ſhall permit the ſoil thrown out to obſtruct or prejudice the highway for five days, after notice by the ſurveyor, he ſhall forfeit 10s. 203. ſ. 158

9. If any perſon ſhall encroach on the highway, by making any ditch within 15 feet from the centre, &c. &c. he ſhall forfeit 40s. and the ſame ſhall be filled up again at the expence of the offender, 203. ſ. 159

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1. A dove cote, either erected by the lord or his tenant, is not a common nuſance, 146. ſ. 8

2. It may be juſtified by preſcription, *ibid.*

3. It is demandable in a *præcipe* before any land whatſoever which is not built upon, *ibid.*

4. The owner of a dove cote may juſtify taking another's hawk flying at his pigeons, *ibid.*

5. But a tenant is liable to an action on the caſe, for building a dove cote without licence from the lord, *ibid.*

6. But by 1. Jac. 1. c. 27. and 2. Geo. 3. c. 29. the keeping pigeons as therein prohibited, is a nuſance, *ibid.*

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hearken after diſcourſe, and thereupon to frame ſlanderous and miſchievous tales to the common nuſance; and are preſentable at the leets, indictable at ſeſſions, and puniſhable by fine and finding ſurety for good behaviour, *Page* 14. ſ. 4

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1. A force done to eccleſiaſtical poſſeſſions, as churches, vicarage houſes, &c. is as much within the ſtatutes againſt forcible entries as if it were done to any temporal inheritance, 38. ſ. 31
2. The juriſdiction of the eccleſiaſtical court is ſaved by the ſtatute againſt tippling, 291. ſ. 78
3. So alſo it is ſaved by 5. Eliz. c. 9. againſt perjury and ſubornation, 93. ſ. 15
4. The 5. Eliz. c. 14. againſt forging deeds, wills, &c. ſhall not extend to any officer of the eccleſiaſtical court who ſhall officially ſet his name to any ſuch writing, &c. 108. ſ. 15
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No perſons can be guilty of an affray, by aſſembling and arming in order to oppoſe enemies, 22

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The manner in which foreſtalling, engroſſing, and regrating, were treated by the common law, and by ſtatute, previous to 12. Geo. 3. c. 71. *Page* 317 to 322

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See WITNESS.

1. Opening the evidence to the jury in favour of one of the parties, is ſaid to be a ſpecies of maintenance, 394. ſ. 6
2. A borrower ſhall not be admitted an evidence againſt an *uſurer*, until he has paid off the whole debt, 386
3. But the borrower is a good evidence to prove the repayment of the money, and alſo the uſurious contract, 386. ſ. 75
4. So he may give evidence, though the money is not repaid, if the queſtion neither affects the debt nor avoids the contract, *ibid.*
5. Where the intereſt of a witneſs is doubtful, the objection ſhall only go to the *credit* of his evidence, and not to his competency, *ibid.*
6. Evidence of a loan of *goods* will not ſupport an information for uſury for the loan of *money*, 387. ſ. 78
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1. A man may be bound to good behaviour for accuſing juſtices of ignorance of the exciſe laws, 15. (N) 1
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3. How retailers of exciſeable liquors ſhall be licenſed, 275, &c.
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5. Commiſſioners of the exciſe empowered to mitigate penalties, 285

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EXCOMMUNICATION.

1. By 5. & 6. Edw. 6. c. 4. whoever ſhall ſmite or lay violent hands upon another in a church or church-yard ſhall *ipſo facto* be deemed excommunicate, *Page* 26. ſ. 25

2. And whoever ſhall maliciouſly ſtrike another with any weapon in a church or church-yard, or draw the ſame with intent ſo to ſtrike, ſhall, on conviction as the ſtatute directs, have one of his ears cut off, and ſtand *ipſo facto* excommunicated, 26. ſ. 26

3. But notwithſtanding the words *ipſo facto*, there muſt be either a precedent conviction at law, tranſmitted to the ordinary, or elſe the excommunication muſt be declared in the ſpiritual court, on *proof of the offence* there, 26

4. Excommunication muſt always appear judicially, otherwiſe there can be no abſolution, 27

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The ſeveral ſtatutes creating the offence of exporting tools enumerated, 431 to 453

EXTORTION

1. Is any oppreſſion, but eſpecially an officer obtaining money colourably, where none, or not ſo much, is due, or where it is not yet due, c. 68

2. No fees ſhall be taken but of the king, by any officer concerned in the adminiſtration or execution of juſtice, &c. 79. ſ. 2

3. A preſcription by a clerk of the market, claiming fees for the view of weights and meaſures, is void, 79

4. The danger of oppreſſion from officers ancient fees, as the bar fee by the ſheriff, &c. which they claimed, 79. ſ. 3

5. An enumeration of the ſtatutes by which their fees are now ſettled, 80 *notis*

6. Officers guilty of extortion who take other fees than they are allowed, 80 ſ. 4

7. A promiſe to pay them more than they are intitled to take is void, *ibid.*

8. It is extortion to oblige an executor to prove a will twice over, and to take fees thereon; or to procure a gratuity to become bail for a priſoner; or to arreſt a man and procure a releaſe; or to obtain money from a priſoner by any colour of office, *Page* 80 *notis*

9. It is extortion for a miller to take more than is due by cuſtom; or for a commiſſary to take more than his right for abſolution; or a ferryman for ferrying; or to force an exorbitant price for places at a fair; or in an under-ſheriff to refuſe execution of proceſs without his fees; or to take a bond for them; or for a coroner to refuſe a view, 80 *notis*

10. Extortion, by the common law, is puniſhable with deprivation, fine, and impriſonment. And by the ſtatute of Weſtminſter, the offender ſhall yield twice as much as he takes, 81

11. The indictment or information muſt ſtate the fact particularly, 81 *notis*

12. The ſeſſions may try the indictment, 81 *notis*

13. An action lies for the double value, 81 *notis*

14. Defects cured by verdict, and the party will be forced to demur, 81 *notis*

15. Proof of the ſmalleſt poſſible taking is ſufficient; for it is the taking, and not the contract, which conſtitutes the crime, 81 *notis*

16. Aiders are principals, and the offence may be laid in any county, 81 *notis*

F.

FAIRS.

1. By 5. & 6. Edw. 6. c. 25. and 26. Geo. 2. c. 31. no perſon, except in fairs, ſhall keep an unlicenſed alehouſe, 282

2. Thoſe who brew ale in fairs muſt give notice to the gaugers, that it may be ſurveyed, *Page* 269. ſ. 8

3. This indulgence only extends to the place where the common fair is held, 269. ſ. 8

FALSE TOKENS.

See CHEAT.

1. By 33. Hen. 8. c. 1. falſely to obtain the property of another by means of any privy falſe token is a miſdemeanor, 115

2. What ſhall be conſidered a privy falſe token, 116

FAME.

1. By 34. Edw. 3. c. 1. juſtices of peace are empowered to reſtrain and to take *(inter alia)* of all them that be *not of good fame* ſufficient ſurety for their good behaviour, 13

2. It has been thought that this means only ſuch as are *defamed* and juſtly ſuſpected of an intention to break the peace, 13. ſ. 2

3. But evil fame as properly includes perſons of ſcandalous behaviour in other reſpects as thoſe who give ſuſpicion of their readineſs to break *the peace*, *ibid.*

4. Therefore for thoſe cauſes of ſcandal which give a man *a bad fame*, as being *contra bonos mores* only, may be bound to his good behaviour, *ibid.*

5. And alſo all perſons whoſe miſbehaviour may reaſonably be intended to bring them within the meaning of perſons of *evil fame*, the great latitude of which leaves it to the judgment of the magiſtrate, 14

6. A libel is any malicious defamation expreſſed in any manner ſo as to be generally underſtood, c. 73

FIREWORKS.

1. By 9. & 10. Will. 3. c. 7. to make, ſell, or expoſe to ſale any fireworks, or any caſes, moulds, or implements for making them, incurs a penalty of 5l. 147

2. If any perſon ſhall, or ſhall ſuffer fireworks to be *let off* in or from their houſe in any public ſtreet or highway, they ſhall forfeit 20s. *Page* 147

3. And every ſuch offence ſhall be adjudged a common nuiſance, 148

FISH.

Regulations reſpecting the preſervation, ſale, and importation of fiſh, 358 to 363

FOOTWAY.

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1. There are three kinds of ways: 1ſt, a footway; 2d, a pack and prime way, which is both a horſe and a foot way; 3d, a cart way, 152

2. A nuiſance in a footway is puniſhable at the leet, 152

FORCIBLE ENTRY AND DETAINER.

1. By common law, a man, within proper time, might regain *his poſſeſſion* by force; and he may now juſtify the re-taking of his *goods* wrongfully withheld, c. 64

2. But ſuch a repoſſeſſion of *lands* is now reſtrained, 29. ſ. 2

3. On an action for a forcible entry, if the defendant proves his title to the lands, &c. he ſhall not pay damages to the plaintiff for *the force*; but he may be puniſhed as a diſturber of the public peace, 29. ſ. 3

4. An indictment lies at common law for a forcible entry; but the actual force muſt be charged, 29. (N) 1

5. By 2. Edw. 3. if arms which ſtrike a terror are uſed in making the entry, the perſons authorized by that ſtatute may ſeize the arms and impriſon the offenders; but they cannot reſtate the party injured to his poſſeſſion, 30. ſ. 5

6. By 5. Rich. 2. c. 7. whoever ſhall make entry into lands, with *ſtrong hand*, and with multitude of people, ſhall ſuffer impriſonment, 30. ſ. 6

7. By

7. By 5. Rich. 2. c. 2. juſtices, with the power of the county, may commit ſuch as hold forcibly after an entry made, *Page* 30. ſ. 7

8. And he ſhall make a record of the fact, which is not traverſable, becauſe he acts not as a miniſter, but as a judge, 31. ſ. 8

9. He may alſo aſſeſs the fine for the offence, *ibid.*

10. But the commitment muſt be upon *a view* of the fact, or for want of finding ſufficient ſureties, *ibid.*

11. If the party traverſe the entry, or the force, or plead three years poſſeſſion, the juſtice may ſummon a jury and try the traverſe, *ibid.*

12. By 18. Hen. 6. c. 9. juſtices are empowered to examine the offence, and put the party intitled into full poſſeſſion, 32. ſ. 9 & 10

13. For which purpoſe they may direct the ſheriff to impannel a jury, each having 40s. a year, 32. ſ. 11

14. Penalty on jurors or ſheriff neglecting their duty, *ibid.*

15. This power extended to all magiſtrates, 32. ſ. 12

16. But this power ſhall not extend to diſpoſſeſs thoſe who have had poſſeſſion for three years, 33. ſ. 13

17. By 31. Eliz. c. 11. this ſecurity confirmed, &c. the party may alledge the three years peaceable occupation in bar of reſtitution. But the fact, on being traverſed, may be tried by the juſtice, who may award coſts, &c. 33. ſ. 14

18. If a leſſee or copyholder be ouſted, and the leſſor, or lord, diſſeiſed, reſtitution to the leſſee, or copyholder, is a reſeiſin of the freehold, 33. ſ. 15

19. By 21. Jac. 1. c. 15. the Court may grant reſtitution to termors, copyholders, tenants by *elegit*, ſtatute merchant and ſtaple, 33. ſ. 16

20. *Quære*, If a tenant by the verge be within the ſtatute, 34. ſ. 17

21. A leſſor who ejects his leſſee, and is then forcibly put out of poſſeſſion, is not within any of the ſtatutes, *Page* 34. ſ. 17

22. But in either of the laſt caſes, the juſtice may remove the force and commit the offender, 34. ſ. 18

23. What ſhall be eſteemed an entry, 34. ſ. 19

24. The bare treſpaſs by a pretender to the lands, although armed, &c. unleſs he actually claim by circumſtances of force and terror, is not an entry, 35. ſ. 20

25. Aiders are principal offenders, although they do not actually enter, 35. ſ. 22

26. One who continues forcibly, under a defeaſable title againſt him who has a right of entry, is within the ſtatutes, 35. ſ. 23

27. But not one who barely agrees to a forcible entry made to his uſe, 35. ſ. 24

28. What entry is forcible, 36. ſ. 25

29. It muſt be with actual *violence and terror*; not ſuch as the law implies in treſpaſs, 36. ſ. 26

30. What degree of *violence* is neceſſary, *ibid.*

31. What circumſtances will amount to *terror*, 37. ſ. 27

32. What DETAINER ſhall be adjudged forcible, 37. ſ. 30

33. A forcible entry or detainer may be committed upon eccleſiaſtical poſſeſſions, as well as upon temporal, or incorporeal hereditaments, for which entry will lie; but not upon a way or eaſement, 38

34. Who may be guilty of this offence, 38. ſ. 32

35. What ought to be the form of a record, upon the ſtatutes of forcible entry, 39 to 45

36. Of what kind of poſſeſſion reſtitution is to be awarded, 44. ſ. 45

37. To whom and in what manner ſuch reſtitution ought to be made, 45. ſ. 46

38. By whom and in what manner ſuch reſtitution may be awarded and given, 46. ſ. 49, &c.

39. How

39. How reſtitution ſhould be barred by a continuance of poſſeſſion for three years, *Page* 47. ſ. 53

40. For what other cauſes ſuch reſtitution may be ſtayed, 49. ſ. 59

41. How ſuch a reſtitution may be ſuperſeded before it is executed, 49. ſ. 61

42. How ſuch a reſtitution may be ſet aſide after it is executed, 50. ſ. 63

FORGERY.

1. FORGERY is either by the common law or ſtatute, c. 70

2. At common law, it conſiſts in falſly and fraudulently making or altering any matter *of record*, or any other *authentic* matter of a *public nature*; as a pariſh regiſter, any deed, or will, 103. ſ. 1

3. The puniſhment is fine, impriſonment, and any corporal puniſhment, 103

4. If a man make a feoffment to one, and afterwards make a feoffment to another of the ſame lands, of *a date prior to the firſt*, it is forgery, 103. ſ. 2

5. So alſo if he had paſſed only an equitable intereſt, 103. ſ. 2

6. If a perſon, in drawing the will of another, inſert legacies of his own head, it is forgery, *ibid.*

7. If one finding another's name at the bottom of a letter cauſes the writing to be cut off, and a general releaſe to be written over the name, and then takes off the ſeal and fixes it to the releaſe, it is forgery, 104

8. To inſert in an indictment the names of thoſe againſt whom in truth it was not found, is forgery, 104

9. So alſo to make any fraudulent alteration of the form of a true deed in a material part of it, *ibid.*

10. As by making a leaſe of the manor of *Dale* appear to be a leaſe of the manor of *Sale*, by changing the *D* into *S*, *ibid.*

11. Or by making a bond for 500l. appear to be for 5000l. by an additional cypher, *ibid.*

12. *Sir Edward Coke*'s opinion, that a deed ſo altered is rather *falſe* than *forged*, controverted, and denied to be law, *Page* 104

13. For forgery does not ſo much conſiſt in counterfeiting the hand and ſeal, as in endeavouring to give an appearance of truth to a mere deceit and falſity; and by force of ſuch falſity, to give it an operation which in juſtice it ought not to have, 104. ſ. 2

14. But a man who writes a deed in another's name, and ſeals it in his preſence, and *by his command*, is not guilty of this offence, 104. ſ. 3

15. Neither ſhall an obligee be puniſhed *for forgery* who eraſes the word *libris* and inſerts *marcis*; for it is alone prejudicial to himſelf, 104. ſ. 4

16. But if it ſhould appear that this alteration was to prejudice a third perſon, it is forgery; and otherwiſe it is *a miſdemeanor*, *ibid.*

17. To write a will *officiouſly* is not forgery, although the teſtator becomes *non compos* before it be brought to him; for it is not writing without privity, but giving an inſtrument a falſe appearance, that conſtitutes forgery, 105. ſ. 5

18. Non-feaſance, as by leaving a legacy out of a will, is not forgery, ſ. 6

19. But perhaps otherwiſe if the omiſſion of one bequeſt cauſe a material alteration in the limitation of a bequeſt to another, *ibid.*

20. But in this caſe the firſt enquiry ſhould be, with what intention the omiſſion was made, *ibid.*

21. It is not material whether the forged inſtrument be made in ſuch a manner that if it were in truth what it is counterfeited for it would be of validity or not, 105. ſ. 7

22. All matters of record, from their high public importance, may become the ſubjects of forgery, 105. ſ. 8

23. So alſo may a privy ſeal, a licence from the *exchequer* to compound a debt, a certificate of holy orders, and a pro-

a protection from a parliament-man, *Page* 105. ſ. 9

24. It is unqueſtionable that a man may be guilty at common law by forging *a deed*; and moſt probably by forging *a will*; but this is not ſettled, 106. ſ. 10

25. It is laid down generally, that the counterfeiting other writings of an inferior nature is not properly forgery, 106. ſ. 11

26. As an order on a tenant to receive rent, *ibid.*

27. But they are puniſhable as cheats, *ibid.*

28. The diſtinction is, that the counterfeiting of writings of an *authentic public nature* is in itſelf criminal, whether any third perſon be actually injured thereby or not; but that the counterfeiting of other writings of an inferior and *private nature* is no crime, unleſs ſome one receive a prejudice thereby, 106. ſ. 11

29. OF FORGERY BY STATUTE, 107. ſ. 12

30. By 5. Eliz. c. 14. whoever ſhall falſely forge any deed, charter, or writing ſealed, court roll, or the will of any perſon in writing, to the intent that the eſtate, or freehold, or inheritance, to any lands, tenements, or hereditaments, freehold or copyhold, or the right, title, or intereſt of any perſon therein, ſhall be moleſted, &c. or ſhall knowingly utter the ſame with the like intent, on conviction, by action of damages to the party grieved, ſhall pay double coſts and damages, be ſet in the pillory, have his ears cut off, his noſtrils ſlit and *ſeared*, forfeit all the profits of his lands, and ſuffer perpetual impriſonment, 107

31. But the uttering ſhall not extend to any attorney, lawyer, or counſellor, who ſhews ſuch deed in evidence for his client, *ibid.*

32. And if ſuch forgery be of any charter, deed, or writing, with intent to claim any eſtate or intereſt for a term of years in any premiſes not being copyhold—or any annuity in fee-ſimple, fee-tail, or for term of life or years—or if ſuch forgery be of any obligation, bill obligatory, acquittance, releaſe or diſcharge of any debt, account, &c. of any thing perſonal, the offender ſhall pay double damages, &c. and be ſet on the pillory as aforeſaid, have one of his ears cut off, and ſuffer impriſonment for one year, &c. *Page* 108

33. And whoever ſhall be convicted of any of the ſaid offences a ſecond time, he ſhall be guilty of felony without benefit of clergy, 108. ſ. 14

34. But this conviction ſhall not corrupt the blood, or bar the deſcent of lands, or dower, nor extend to the ſealing, &c. of ſuch inſtruments in the ſpiritual courts, 108

35. All juſtices of *oyer* and *terminer* and aſſize have juriſdiction over this offence, 108. ſ. 15

36. A falſe cuſtomary of a copyhold manor is within the firſt branch of this act, 109. ſ. 17

37. So alſo is a leaſe for years, or a grant of a rent-charge for years in the name of one who is ſeiſed of a freehold or inheritance, 109. ſ. 18

38. The ſecond branch of the act means only ſuch forgeries as relate to an eſtate or intereſt in *eſſe* before, 109. ſ. 18

39. A will of one poſſeſſed of ſuch eſtate, mentioning a bequeſt thereof, is within the ſecond branch, although the wills are not mentioned, 109. ſ. 19

40. The forgery of a leaſe of lands in *Ireland* is not at all within the ſtatute, 109. ſ. 20

41. Nor is *a deed* containing a gift of mere perſonal chattels, 119. ſ. 21

42. But a ſtatute merchant, or a recognizance in nature of ſtatute ſtaple, are within the meaning of the word *obligation*.—But a ſtatute ſtaple itſelf is not, for it does not require a ſeal, 110. ſ. 22

43. To publiſh a deed, after *information* of its falſity, is an uttering within the act, *Page* 110. ſ. 23

44. The double damages (*Vide ſupra*, No. 32.) ſhall be governed by the penalty, and not by the true debt appearing in the condition, 110. ſ. 24

45. A ſecond conviction for a forgery of a different nature from the firſt, will make the offender guilty of the felony, 110. ſ. 25

46. The proſecution muſt ſtrictly purſue the words of the ſtatute, 110. ſ 26

47. But an indictment ſetting forth that the writing was indented, without adding it was ſealed, is ſufficient, *ibid.*

48. And *ſuper caput ſuum proprium* is a good *legal* tranſlation of the words, "upon his own head," 110

49. A verdict finding *de tranſgreſſione et forgeria prædictus prout ſuperius indictamento ſupponitur*, is ſufficient, *ibid.*

50. But Legiſlature has inflicted *death*, in the firſt inſtance, on the crime of forgery; for which ſee the firſt volume.

G.

GAMING.

1. All common gaming-houſes are indictable as nuiſances, 145. ſ. 6

2. By 10. & 11. Will. 3. c. 17. all miſchievous games called lotteries, by (*inter alia*) dice, lots, cards, &c. are declared nuiſances, and whoever ſhall keep ſuch lottery ſhall forfeit 500l. &c. 147

3. By 9. Anne, c. 14. ſ. 8. to aſſault and beat any perſon on account of monies won by gaming, is forfeiture of goods and two years impriſonment, 18

4. By 16. Car. 2. c. 7. to uſe any fraud or unlawful device, in playing at any paſtime or game, or by bearing a ſhare in the ſtakes, or by betting on the ſide of ſuch as ſhall play, incurs a forfeiture of treble the value, 117

5. By 9. Anne, c. 14. if any perſon ſhall, by any fraud or ſhift, deceit, ill practice, &c. in playing at any of the games mentioned in the act, or by bearing ſtakes, or by betting, &c. win any ſum of money, or other valuable thing, on conviction, by information or indictment, he ſhall forfeit five times the value, be deemed infamous, and ſuffer corporal puniſhment, as in caſes of perjury, *Page* 117

6. How far gaming by wagers and bets is allowed by the common law, 469 to 473

7. The offence of keeping a common gaming-houſe, 473 to 479

8. The offence of exceſſive gaming, 479 to 487

9. The offence of horſe-racing, 487 to 493

10. The offence of gaming by lotteries, cards, and dice, &c. 493 to 523

11. Gaming in public funds, 523 to 529

GATE.

See FENCES.

1. Erecting a new gate in a highway is a nuiſance, becauſe it intercepts that free, open, and legal paſſage the people before enjoyed, 146. ſ. 9. 199. ſ. 146

2. But where a gate has continued time out of mind, it ſhall be intended that it was ſet up at firſt by conſent, or laying out the road, in which caſe the people never had a free paſſage, 146. ſ. 9

3. A gate that is a common nuiſance may be pulled down by any perſon, 148. ſ. 12

GOOD BEHAVIOUR.

See BEHAVIOUR, SURETY, RECOGNIZANCE.

1. By 34. Edw. 3. c. 1. juſtices of peace are empowered to reſtrain offenders, rioters, &c. and to take and arreſt all thoſe they found by indictment *or ſuſpicion*, and put them in priſon—and to take of all them that be not of good

good fame ſufficient ſurety and mainprize for their good behaviour, ch. 69

2. Perſons of evil fame includes perſons of ſcandalous behaviour in other reſpects than thoſe relating to the peace, *Page* 13. ſ. 2

3. A man may be bound to good behaviour for offences *contra bonos mores*, as haunting bawdy-houſes with women of bad fame; keeping bad women in one's houſe; ſpeaking contemptuouſly of a juſtice or a mayor, though not in the execution of office, and alſo of a conſtable in the execution of his office, 13

4. But no one ought to be bound to good behaviour for raſh, quarrelſome, or unmannerly words, unleſs they tend to break the peace or abuſe the government, 14. ſ. 3

5. But there are no preciſe rules, and the magiſtrate has a diſcretionary power, 14

6. Surety may be taken of all he may juſtly ſuſpect to be dangerous, quarrelſome, or ſcandalous, as thoſe who ſleep in the day and wake in the night, or keep ſuſpicious company, reputed robbers, &c. eaves droppers, common drunkards, and all perſons whoſe conduct renders them *of evil fame*, 14

7. A variety of inſtances enumerated in which ſurety for behaviour has been taken, 15 *notis*

8. By 1. Mary, ſt. 2. c. 3, it may be required of perſons *convicted* of diſturbing divine ſervice, 69. ſ. 53

9. By 4. Jac. 1. c. 5. and 21. Jac. 1. c. 7. on conviction a ſecond time for drunkenneſs, 290

10. By 9. Anne, c. 14. of perſons unlawfully gaming, 483. ſ. 40

GRAND JURY.

1. The grand jury cannot find a bill true for part, and falſe for part, as the petty jury may, 42

2. But an indictment of *two counts*, one for a riot, indorſed by the jury *ignoramus*, the other for an aſſault returned *billa vera*, is good, *Rex v. Fieldhouſe*, *Page* 43

GRANT.

See MONOPOLY.

1. All grants of monopolies relating to any known trade are void by the common law, 294. ſ. 2

2. By the common law, the king's grant to any particular corporation of the ſole importation of any merchandize is void, 294

3. The grant of the ſole ingroſſing of wills and inventories in a ſpiritual court, or of the ſole making of bills, pleas, and writs, in a court of law to any particular perſon, is void, 294. ſ. 4

4. A grant for the ſole making, importing, and ſelling of playing cards, is void, 294. ſ. 5

5. Nothing can exclude a ſubject from trade but an act of parliament, (N) 3

6. But the king may grant to any one the ſole uſe of any art invented, or firſt brought into the realm by the grantee, 294. ſ. 6

7. The king may grant to particular perſons the ſole uſe of ſome particular employments; as printing the holy ſcriptures, law-books, &c. *ibid.*

8. By 21. Jac. 1. c. 3. all grants of monopolies are declared void, 295

9. All perſons diſabled to uſe them, ſ. 9

10. And the force and validity of ſuch grants ſhall be heard and determined by the common law, 295. ſ. 10

11. How perſons aggrieved by ſuch grants ſhall be relieved, 295

12. But this ſtatute ſhall not extend to *grants of privilege*, for the term of fourteen years, for the ſole working or making of any new manufacture, within this realm, to the true and firſt inventors, 298. ſ. 21

13. Manufactures newly brought into the realm are within this grant of privilege, *Page* 298. ſ. 21

14. But it is provided that ſuch grants ſhall not be contrary to law, nor miſchievous to the State, &c. *ibid.*

15. Nor ſhall they in anywiſe prejudice the grants to corporations or companies, &c. 298

16. Sundry other exceptions out of this ſtatute, 298

17. How far patents are legal, 299

GUEST.

1. If an inn-keeper refuſe either to receive a traveller, as *a gueſt*, into his houſe, or to find him victuals or lodging, upon his tendering him a reaſonable price for the ſame, he may be ſued by action for damages, and alſo indicted and fined at the ſuit of the king, 267. ſ. 2

2. And it is ſaid that the conſtable may compel him to receive ſuch gueſt, *ibid.*

GUDGEONS.

The uſual nets for taking them may be uſed, provided they are not uſed for fiſh prohibited to be taken by ſuch nets, 360

GUNPOWDER.

1. By 21. Jac. 1. c. 3. againſt grants of monopolies, it ſhall not extend to grants concerning digging, making, or compounding of ſaltpetre or gunpowder, &c. 295. ſ. 10

2. By 16. Car. 1. c. 21. *all perſons* may import, make, and ſell gunpowder, or the materials thereof, notwithſtanding any inhibition, 295. ſ. 11

H.

HAY AND STRAW.

1. By 2. Will. & Mary, c. 8. every truſs of old hay for ſale within the bills of mortality, between 1ſt Auguſt and June, ſhall weigh 56lb. and new hay, from June to Auguſt, 60lb. on pain of 16d. a truſs, *Page* 364. ſ. 117

2. By 31. Geo. 2. c. 40. all ſtraw within the bills of mortality ſhall be ſold in bundles weighing 36lb. on pain of 1s. for every bundle deficient, 364. ſ. 118

HIGHWAYS.

See TURNPIKE ROADS.

1. HIGHWAYS are either foot ways, park ways, or court ways, &c. 152

2. A common river is a public highway, 152. ſ. 1

3. A horſe cauſeway is a highway, *ibid.*

4. A thoroughfare is a highway, *ibid.*

5. Every way common to all ſubjects from town to town is a public highway, *ibid.*

6. But a way to a pariſh-church, or to the common fields of a town, or to a private houſe, or perhaps to a village which terminates there, is a private way, and not a highway, 152

7. The building of a ſtreet is a dedication of the highway to the public; but the ſoil ſtill remains in the owner, 153

8. If a highway through an open field be impaſſable, the people may go by outlets, even over corn ſowed thereon, 153. ſ. 2

9. The grantee of a way may remove obſtructions therein, 153

10. But he cannot dig trenches to let off water from the way, which the grantor has cauſed; for he has no intereſt in the ſoil, *ibid.*

11. But he may have an action for ſpoiling the way; and perhaps may go on an outlet of the wrong-doer, *ibid.*

12. If a private way be ſpoiled by the grantee, he ſhall repair it, and not the grantor, unleſs the grantor has bound himſelf ſo to do, *ibid.*

13. An ancient highway cannot be changed without an *ad quod damnum* and inquiſition thereof, *Page* 153. ſ. 3

14. A way changed without ſuch authority may be ſtopped up, *ibid.*

15. And treſpaſs will lie for going on *ſuch* new way, 154

16. Neither are inhabitants bound to watch, anſwer for robbing in, or to repair *ſuch* new road, 154

17. But if a *river* change its courſe, the highway continues in the new channel, in the ſame manner as in the old, 154

18. The owner of land through which a road runs is obliged to repair, unleſs he incloſes, 154

19. But not a road changed by *ad quod damnum*, except the jury impoſe ſuch obligation upon the perſon who brings it, 154

20. The ſame conſequences alſo reſult from the power given by ſtatute to commiſſioners, *ibid.*

21. Generally, the occupiers of lands are bound to repair the highways in the pariſh where ſuch lands lie, 155. ſ. 5

22. But the tenants whoſe lands adjoin the road are bound to ſcour their ditches, *ibid.*

23. Private perſons may be burthened to repair highways, either in reſpect to the occupation of lands, or by preſcription, *ibid.*

24. In reſpect to lands; as where the owner incloſes the lands through which the highway lies, 155. ſ. 6

25. And if the adjoining lands belong to ſeveral owners, each are equally obliged to repair, 155. ſ. 7

26. But if the owner throws down the incloſure, he is thereby releaſed from the burthen of repair, 155

27. In an *ad quod damnum*, the pariſhioners ſhall repair the new road, 155

28. But another pariſh, who gain no benefit from the change of the road, ſhall not repair, although it goes through part of ſuch pariſh; but the perſon ſuing out the writ and his heirs ſhall repair ſuch part of the road, 156

29. A corporation may be bound to repair by force of a general preſcription, 156. ſ. 8

30. Nor is it any excuſe that they did uſe to repair it *out of charity*, *ibid.*

31. But a private perſon cannot be bound by a general preſcription, *ibid.*

32. A tenant in fee may be bound *ratione tenuræ*, *ibid.*

33. A tenant at will may be indicted for ſuffering a houſe on the highway to grow ruinous, *ibid.*

34. But if the pariſh be indicted, where a particular perſon is bound, either by tenure or preſcription, they cannot diſcharge themſelves under the general iſſue, but muſt plead it ſpecially, 157. ſ. 9

35. A pariſh in two counties; the indictment may be againſt that part only where the highway lies, 157

36. But an indictment againſt a particular diviſion of a pariſh muſt ſhew how ſuch diviſion are bound to repair, *ibid.*

37. Of HIGHWAYS BY STATUTE, 13. Geo. 3. c. 78. 157

38. Who are compellable to work in the repairs of the highways in their own perſons or by others, 157 to 168

39. Who may be aſſeſſed to a rate made for the defraying of the extraordinary charges of ſuch repairs, 168 to 170

40. In what manner fines for non-repair ſhall be levied and aſſeſſed, 170 to 171

41. In what manner the profits of lands ſettled in truſt for the repairs of the highways ſhall be employed, 171 to 172

42. In what manner a highway may be enlarged, 172 to 180

43. In what manner *ſurveyors* of the highways ſhall be appointed, 180 to 186

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44. In what manner ſurveyors of the highways ought to execute their office, *Page* 186 to 198

45. What ſhall be ſaid to be a nuiſance to the highway at common law, 198 to 199

46. What ſhall be ſaid to be a nuiſance to a highway by ſtatute, 199

47. How ſuch nuiſances are to be removed and puniſhed, *ibid.*

48. In what order hedges and ditches adjoining to a highway are to be kept, 200 to 202

49. How far all trees and buſhes are to be removed from the highway, 202

50. In what manner all other annoyances to a highway are to be removed, 202 to 204

51. How far all perſons are puniſhable for taking away things made uſe of for the benefit of highways, 204

52. How far perſons may be puniſhed for drawing a carriage with more than five horſes in length, 205 to 207

53. How far drivers of carriages are puniſhable for miſbehaviour, 207 to 210

54. In what manner thoſe who are charged with any offence relating to the highway are to be proceeded againſt, 210 to 217

55. In what manner perſons proceeded againſt for any offence relating to highways may defend themſelves, 217

56. In what caſes it may be ſafe to demur to or confeſs an indictment or a preſentment for a matter relating to highways, 220 to 223

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All houſeholders dwelling in any county or town, whether they occupy lands or not, are within the ſtatute of bridges, 264 ſ. 22

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2. How far a conſtable may enter a houſe to ſuppreſs an affray therein, 23. ſ. 16

3. It is felony riotouſly to pull down, or begin to pull down, a houſe, 68

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1. A wife may demand ſurety of the peace againſt her huſband threatening to beat her outrageouſly, 4. ſ. 4

2. A huſband may have it alſo againſt his wife, *ibid.*

3. Caſes in which it has been granted to peers and peereſſes, 6 *notis*

I. J.

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See CONTRA PACEM, VI ET ARMIS.

1. In an indictment for forcible entry, *tali die intravit, &c. et ipſum* A. B. *manu forti diſſeiſivit*, are ſufficient, without adding *ad tunc et ibidem*, 43. ſ. 42

2. But in murder, it is a fatal miſtake not expreſsly to ſhew the day and place of the ſtroke, as well as of the aſſault, 43. ſ. 42

3. In an information or indictment on a penal ſtatute, the words of the ſtatute muſt be preciſely purſued, 323. 110

4. An indictment on a ſtatute need not ſhew that the defendant is within the benefit of an exception, 323

5. An indictment is not vitiated by falſe *Latin*, unleſs it be unintelligible or nonſenſical, 110

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1. Infants ought to find ſecurity for the peace, by their friends, and not be bound themſelves, *Page* 5. ſ. 5
2. May be guilty of a forcible entry in reſpect of actual perſonal violence, 39. ſ. 35

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1. An innkeeper may be indicted at common law for *the nuiſance* of harbouring thieves, or ſuffering diſorders, or taking exorbitant prices, or if he open a new inn unneceſſarily, &c. c. 78
2. If he refuſe to entertain a traveller, &c. he is liable to an action by the party grieved, 267. ſ. 2
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5. They muſt ſell their victuals and provender at reaſonable rates, 319

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3. *The Earl of Middleſex* fined for bribery, *Page* 76. ſ. 7
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1. A libel is a malicious defamation in printing or writing, or expreſſed by ſigns, or by pictures, c. 73
2. It is ſeverely puniſhed, becauſe of its direct *tendency* to a breach of the peace, 127. ſ. 3
3. So alſo ſcandal written in a ſcoffing or ironical manner is libellous, 128. ſ. 4
4. So alſo a defamatory writing, expreſſing only one or two letters of a name, but ſignificant of a particular perſon, is a libel, 128. ſ. 5
5. A friend of the party libelled muſt prove that he underſtood its meaning, &c. 128. ſ. 6
6. It is no juſtification of a libel that the contents are true, *ibid.*
7. The reaſons for this maxim, *ibid.* (N) 1
8. A writing which defames private perſons is equally libellous as if the object of the defamation was a public character, 129. ſ. 7
9. But libels againſt public characters are moſt heinous, 129
10. But no ſcandalous or impertinent matter contained in public or in legal proceedings will amount to a libel, even if the court has no juriſdiction, 129. ſ. 8
11. Yet if it manifeſtly appear that the ſole intention of the ſuit was for the purpoſes of defamation, it may be otherwiſe, 129
12. But no preſentment of a grand jury ſhall ever be eſteemed libellous, 130
13. Nor

13. Nor can any writing be libellous, unleſs it reflect upon ſome perſon, *Page* 130

14. But writing an obſcene book may be puniſhed by the temporal courts, 130 *notis*

15. Thoſe who compoſe a libel may be puniſhed as well as thoſe who publiſh it; and ſo may thoſe who procure it to be compoſed or publiſhed, 131. ſ. 10

16. Ignorance of the contents, is no juſtification for diſperſing a libel, 131

17. And if a perſon either read or hear a libel, and afterwards maliciouſly read, or repeat it, or lend it to another, he is guilty of publication, 131

18. Copying a libel is *prima facie* evidence of publication, 131

19. If ſervants publiſh a libel during their maſter's impriſonment, they having no poſſible acceſs to him, the crime ſhall not be imputed to the maſter unleſs ſome privity appear, 131 *notis*

20. The *amanuenſis* of a libel is guilty of making it, 131

21. Sending a provoking letter to another, is highly puniſhable, 131. ſ. 11

22. Sending a libel to the party defamed is a publication, *ibid.*

23. So a defamatory petition, if delivered to any but a member of parliament, is a publication, 131. ſ. 12 & 15

24. But barely to read a libel, without a previous knowledge that it was a libel; or hearing it, to laugh at it as a libel; or only to have a libel in one's cuſtody, is not puniſhable, 132 ſ. 13

25. But the cuſtody of a copy of a libel, publicly known, is evidence of publication, 132

26. And *quære*, if he who only repeats a libel in jeſt and merriment is thereby guilty, 132. ſ. 14

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4. By 3. Edw. 1. c. 9. officers procuring or concealing felonies done in their liberties, or who will not arreſt the offenders, ſhall be impriſoned one year and make grievous fine; or ſuffer three years impriſonment, 1. ſ. 3

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2. Therefore *private* annoyances are not the ſubject of *public* proſecution, the injury muſt be repaired in a *civil* action, 144. ſ. 2

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8. But neither an old nor a new dove-cote are nuſances, for the erecting them may be juſtified by preſcription, &c. 146. ſ. 8

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11. To divert the courſe of a navigable river, and, *perhaps*, to multiply inmates during the prevalence of a contagion, are nuſances, 147. ſ. 11

12. To diſturb the neighbourhood with a ſpeaking trumpet; to ſuffer a houſe to grow dangerouſly ruinous; to obſtruct the intercourſe of a public river; to damage a public highway; to put an improper ſhip into *Billingſgate Dock*, are nuſances, 147 *notis*

13. But an hoſpital for inoculation is not a nuſance; nor to lay bricks in a private fiſhery in the Thames; nor to violate a public law; nor to obſtruct a proſpect, 147 *notis*

14. And *quære*, if a coney-burrow is a nuſance, *ibid.*

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16. By 9. & 10. Will. 3. c. 17. all private lotteries, &c. are public nuſances, *ibid.*

17. By. 6. Geo. 1. c. 18. ſ. 19. all public *bubbles* are nuſances, *ibid.*

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19. And may juſtify a *treſpaſs* for that purpoſe, *Page* 148

20. And the plea need not ſtate that the party did as little damage as poſſible, *ibid.*

21. Thoſe who have the fiſhery of a river, or thoſe who have a paſſage or eaſement therein, ſhall be obliged to abate a nuſance on ſuch river, if none are bound to do it by preſcription, 149. ſ. 13

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28. A thoroughfare is a highway, *ibid.*

29. Nuſances in highways are not puniſhable by action, *ibid.*

30. Every way, from town to town, may be called a highway, *ibid.*

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9. Infants and *femes covert* ought to find ſecurity by their friends, *ibid.*

10. The ſafeſt way againſt *a peer* is by application to the chancery or king's bench, *ibid.*

11. *Quære*, If a joint recognizance may be taken for ſurety of the peace, 5 *notis*

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28. A recognizance by *ſupplicavit* need not be certified without *certiorari* is brought, 10. ſ. 18

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30. If the party then make default, the recognizance then ſhall be certified into the ſuperior court, *ibid.*

31. But the ſeſſions have a diſcretion, upon cauſe ſhewn, to excuſe his default, *ibid.*

32. The ſeſſions cannot proceed for the forfeiture.—But upon eſtreating the recognizance, the courts at *Weſtmin-*

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38. A variety of ſuch aſſaults enumerated, *ibid.*

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40. Nor can a tenant beat another in defence of his landlord, 12

41. But a bare treſpaſs, without violence, is not a cauſe of forfeiture, 12. ſ. 25

42. Violence in any athletic ſport, as cudgels, &c. is not a cauſe of forfeiture, but a wound given in *playing* with *naked ſwords* is, 12. ſ. 26

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4. As before perſons authorized by the king to examine witneſſes; or in a court of record upon iſſue therein; or before any court of equity, ſpiritual or other lawful court, whether of record or not; or before perſons authorized by ſuch courts, as the ſheriff upon a writ of enquiry, 85

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15. It is not material whether the fact ſworn be true or falſe, 88. ſ. 6

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25. By 8. Eliz. c. 9. whoever ſhall be convicted of perjury upon that ſtatute ſhall forfeit 20l. ſuffer ſix months impriſonment, be rendered incapable of being a witneſs until the judgment be reverſed; and then he ſhall be liable in damages to the party grieved, 93. ſ. 13

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27. One moiety of the forfeiture to the king; the other to the party grieved, *ibid.*

28. The quarter-ſeſſions may enquire of perjury on this ſtatute, *ibid.*

29. But the juſtices have no juriſdiction over this offence at common law; and indictments are uſually preferred at the aſſizes, 93. (N) 5

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40. And a *false affidavit* against another in a court of justice is not within the act, 97. s. 21

41. And *quære*, If a false oath upon a writ of enquiry is within it, 97

42. But if the defendant should, *in the face of the Court*, confess an affidavit to be false, the common pleas has punished the offender under this act, 97 (N)

43. The oath must be to the prejudice of another, 98. s. 22

44. And the party who complains must have been actually grieved by it, and be so proved, 98

45. And *the manner* in which the false oath conduced to the prejudice must be set forth, *ibid.*

46. By a positive *averment*, and not by way of *innuendo*, *ibid.*

47. Therefore where the party is *benefited* by the perjury, the offender cannot be prosecuted on this statute, 99

48. So also it must appear to have been committed in a cause properly depending between the plaintiff and the party for whom the offender was examined as a witness, 99

49. By 8. Geo. 1. c. 6. perjury may be assigned upon the quakers affirmation, 91. s. 24

50. By 31. Geo. 2. c. 10. perjury to obtain the probate to a seaman's will, or letter of administration to his effects, is DEATH WITHOUT CLERGY, 100

51. By 28. Geo. 2. c. 13. perjury, in sheriffs or officers, upon any of the matters of the act, incurs 500l.—and if committed by a prisoner, intending to take advantage of the act, is death without clergy, *Page* 100. (N) 6

52. How perjury shall be charged and assigned by 23. Geo. 2. c. 11. 100. s. 26, 27

53. How the Court will treat an indictment seemingly defective, *ibid.* (N) 8

54. The Court may order perjured witnesses to be prosecuted, &c. 101. s. 28

55. By 12. Geo. 1. c. 29. attornies who shall practise after having been convicted of perjury shall be transported for seven years, 101. s. 29

PETITIONING.

1. By 13. Car. 2. c. 5. no address to the king or parliament, for alteration of any matter of church or state, shall be signed by more than twenty persons, unless first consented to by three justices, grand jury, or lord-mayor, &c. on pain of 100l. 70

2. By 1. Will. & Mary, c. 2. it is declared to be the right of the subjects to petition the king, and that all prosecutions for so doing are illegal, 70

3. But this act does not repeal 13. Car. 2. c. 5. 70

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1. A playhouse may become a common nusance, if it draw together such numbers as become inconvenient, 145

2. By 10. Geo. 2. c. 28. actors of plays in unlicensed houses are deemed rogues

rogues and vagabonds, &c. and are liable to a penalty of 50l. *Page* 531

3. A true copy of all dramatic works ſhall be ſent to the lord chamberlain fourteen days before repreſentation, ſigned by the manager, &c. on pain of 50l. 532

4. The lord chamberlain may prohibit the repreſentation, *ibid.*

5. Plays acted in public-houſes ſhall be deemed to be acted for hire, &c. *and liable to the above penalties,* *ibid.*

6. The manner of recovering the penalty, *ibid.*

7. By 17. Geo. 2. c. 5. all common players deemed rogues and vagabonds, 539

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2. A juſtice may raiſe THE POSSE to remove a forcible entry or detainer, 53. ſ. 2

3. Sheriffs and juſtices may raiſe it to execute the king's writs, if they apprehend reſiſtance, *ibid.*

4. Sheriff, under-ſheriff, conſtables, and every peace-officer, may raiſe it to ſuppreſs a riot, 56

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RIOTS, ROUTS, AND UNLAWFUL ASSEMBLIES.

1. A RIOT is a tumultuous diſturbance of the peace by three perſons or more, &c. &c. c. 65

2. Force and violence in the proſecution of an *illegal act* makes the offenders rioters, 53. ſ. 2

3. But to effect a *legal act*, even forcibly, by means of numbers, will not make the actors rioters, 53

4. Yet they are anſwerable for any *needleſs* outrage, 53

5. If numbers meet together innocently, as at a wake or fair, and a quarrel enſue, they are not rioters, but affrayers, 53. ſ. 3

6. Otherwiſe if they had formed parties under the pledge of mutual aſſiſtance, 53

7. Eſpecially if the notice of their confederacy be for illegal purpoſes of a *private nature*, as pulling down bawdy-houſes, &c. 54

8. And thoſe who join ſuch a confederacy, after it is once formed, are equally guilty, *ibid.*

9. The enterprize muſt be accompanied with ſome *offer* of violence, either to the perſon or poſſeſſion of another, 54. ſ. 4

10. Therefore riding armed, in a manner conducing to terror, is only an unlawful aſſembly, and not a riot, 54

11. But the ſhew of armour, threatening ſpeeches, turbulent geſtures, &c. are ſufficient *offers* of violence to maintain that the riot was *in terrorem populi*; for it muſt be ſo laid to be done, 54. ſ. 5

12. But if *any number* aſſemble, without circumſtances of terror, to do an act, under a *pretended* right, they are not rioters, *Page* 55

13. Nor to do an act contrary to the common law or ſtatute: as to celebrate maſs, &c. if they perform it peaceably, *ibid.*

14. If the object of an aſſembling be of a *public nature*, as to pull down *all* bawdy-houſes, &c. ſuch rioters will be guilty of treaſon, 55. ſ. 6

15. And *private* redreſs, even where authorized by law, muſt be executed in a *peaceable* manner, or the offenders, if to the number of three or more, will be rioters, 55. ſ. 7

16. But, perhaps, the juſtice of ſuch a caſe, though riotouſly purſued, would mitigate the offence, 56

17. A ROUT ſeems to be an unlawful aſſembling of perſons with *an intention*, and actually *moving* to do a thing, the execution of which would make them rioters, *ibid.*

18. AN UNLAWFUL ASSEMBLY is an aſſembling with circumſtances of terror, with or without an *intention* to do a riotous act, but neither *executing* it, or making any *motion* towards it, 56. ſ. 9

19. For a man cannot *tumultuouſly* aſſemble even his friends for the defence of his *perſon*, as he may for the defence of his *houſe*; but he muſt ſeek his ſecurity by obtaining ſureties for the peace, 56. ſ. 10

20. All peace-*officers* may ſuppreſs a riot and command the aſſiſtance of other perſons for that purpoſe, 57. ſ. 11

21. And as private perſons may ſuppreſs an affray, *à fortiori* they *may aſſiſt* and arm themſelves to ſuppreſs a riot, 57

22. Riots which ſavour of rebellion *they* may *certainly* interpoſe to ſuppreſs; for, on ſuch occaſions, no remedy can be too ſharp or ſevere, *ibid.*

23. By 1. Geo 1. c. 5. if twelve perſons, riotouſly aſſembled, ſhall ſo continue together for one hour after proclamation, they may be apprehended by a peace-

a peace-officer, and carried before a magiſtrate; and if the rioter happen to be killed, the officer ſhall be diſcharged, *Page* 57. ſ. 11

24. Perſons not actually engaged, but only aiding, &c. are principals in the ſecond degree under this act, 57. *Note in mar.*

25 But this ſtatute does not abridge the authority which either officers or private perſons have at common law, 57. ſ. 11

26. By the common law, rioters may be puniſhed, according to the degree of the offence, by fine and impriſonment, pillory, and forfeiture of lands, 58. ſ. 12

27. Corporators puniſhable in their natural capacity for ſuffering riots within their juriſdictions, 58. ſ. 13

28. Women are puniſhable as rioters, but not infants wanting diſcretion, 58

29. By 34. Edw. 3. c. 1. *one* juſtice of the peace has authority over rioters, to reſtrain, arreſt, and chaſtiſe them, 58. ſ. 15

30. He may authorize their arreſt *by parol*, and commit for not giving ſureties, 58. ſ. 16

31. But *one* juſtice cannot by virtue of this act record a riot, or enquire of it after it is over; but he may by virtue of the *ſtatute of Northampton*; becauſe under the firſt he acts miniſterially, and under the ſecond judicially, 59. ſ. 17

32. And where a juſtice is authorized to make a record, the fact he records is not traverſable, 59

33. By the common law, as a conſervator, and by 17. Rich. 2. c. 8. a juſtice may raiſe THE POSSE to ſuppreſs a riot, 59. ſ. 18

34. By 13. Hen. 4. c. 7. two juſtices, with the ſheriff, may record a riot, and convict the offenders in the manner deſcribed by 34. Edw. 3. c. 1. 60. ſ. 19

35. And for the purpoſe of ſuppreſſing the riot, they may raiſe THE POSSE, which even noblemen are obliged to attend, who may arm themſelves with proper weapons, *Page* 60. ſ. 20

36. And this they may do, not only upon view, but information of the riot, and upon ſeeing any detached parties of the rioters; yet if they alarm the county frivolouſly, they ſhall be puniſhed, 61. ſ. 22

37. After view they may record the riot, although the rioters are in cuſtody, and upon freſh ſuit may retake any who ſhall eſcape;—but afterwards the record muſt be ſent to the king's bench, and proceſs to retake muſt thence iſſue—they may, however, at any time arreſt rioters to compel ſureties for behaviour. 61

38. If one bound by a recognizance of the peace be included in the record of the riot, the production of it againſt him is concluſive, 61. ſ. 25

39. But if the record contain a charge of felony, or maim, or reſcous, yet it is concluſive only as to the riot, 62. ſ. 26

40. This record, being a conviction, ought to be certain and very circumſtantial; it ſhould ſhew that the parties are guilty, and how far guilty within the ſtatute; that the juſtices have purſued their power, &c. 62. ſ. 27

41. How ſuch convicted rioters may be puniſhed, 62. ſ. 28

42. By 13. Hen. 4. c. 7. if the rioters are diſperſed before the two juſtices, ſheriff, or under-ſheriff, arrive, the juſtices (without the ſheriff, p. 63. ſ. 33.) may, within a month after, enquire, hear, and determine the offence according to law, 63. ſ. 29

43. By 19. Hen. 7. c. 13. the ſheriff, for this purpoſe, is directed to return a jury of 24 perſons, &c. who ſhall be fined for diſobedience, 63. ſ. 30

44. It is not ſettled whether the power of the juſtices is confined to a lunar or calendar month, 63. ſ. 31

45. But this authority extends to *all* the juſtices within the county, who may award proceſs under their own *teſte*, *&c.* *Page* 64. ſ. 34

46. It is queſtionable whether the juſtices can diſcharge rioters upon ſubmitting to a fine, without impriſonment, 64. ſ. 35

47. Formerly rioters might be fined both by the juſtices and by the *ſtar-chamber*, 64. ſ. 36

48. By 13. Hen. 4. c. 7. the juſtices and ſheriff may certify the record to the privy (*Vide* p. 66. ſ. 41.) council; which ſhall have the effect of a PRESENTMENT, and the offender may be tried thereon; but the certificate may be traverſed and tried in king's bench; and if the offenders do not appear on proclamation, they ſhall be attainted of the riot, 65

49. Puniſhment and proceſs againſt the jury, if they are guilty of maintenance, &c. 65. ſ. 38

50. The certificate may be made by the juſtices who recorded the riot; but it is moſt proper to be made by thoſe who took the enquiry, 65. ſ. 39

51. And if they neglect ſo to do, they ſhall forfeit 20l. *ibid.*

52. And the ſaid certificate muſt be made within a month after an enquiry, 66. ſ. 40

53. And if the enquiry be obſtructed, the certificate ſhould contain the cauſes of the obſtruction, *ibid.*

54. If there be any variance between the inquiſition and the certificate, that which is moſt for the king's advantage ſhall be preferred; but *quære*, if they differ only in the time, 66. ſ. 42

55. And the certificate being in the nature of an indictment, it ſhould be certain and circumſtantial; but *quære*, if the addition of the offenders need be inſerted, 66. ſ. 43

56. And if the juſtices neglect to put 13. Hen. 7. c. 13. into execution, they ſhall forfeit 100l. 67

57. But to incur this penalty the juſtices muſt live within the county; and if any juſtice execute the act, it excuſes the reſt, 67. ſ. 45, 46

58. Only thoſe who dwell neareſt the riot are liable; but if the neareſt juſtice die, the next in vicinity is bound to execute the act; and if any others, on notice, of which the notoriety of the fact is ſufficient, neglect to ſupply their default, they are fineable, 67. ſ. 47, 48, 49. 52

59. A partial execution of the act will not excuſe from the penalty; but it is only in enormous riots, as rebellion or inſurrections, that they are liable, 67. ſ. 50, 51

60. No acquieſcence of the parties will excuſe the juſtices, 68. ſ. 53

61. How rioters may be outlawed, 68

62. The penalties of the foregoing ſtatutes found ineffectual; therefore by 1. Geo. 1. c. 5. if twelve or more, riotouſly aſſembled, do not diſperſe upon proclamation by the magiſtrate, but ſhall continue together for one hour afterwards, or ſhall hinder the magiſtrate from making the proclamation, they ſhall be felons without benefit of clergy, 68, 69

63. And if *any perſons*, riotouſly aſſembled, ſhall demoliſh or begin to pull down any church, chapel, or any building for religious worſhip regiſtered according to 1. Will. & Mary, c. 18. or any dwelling-houſe, barn, ſtable, or other outhouſe, felony without clergy, 69. ſ. 58

64. The inhabitants or the hundred made liable, 69. ſ. 59

65. By 9. Geo. 3. c. 29. the above penalties extended to the riotous demolition of mills, 69. ſ. 60

66. By 13. Car. 2. c. 5. no petition ſhall be ſigned by more than 20 perſons, &c. 70. ſ. 61

RIDING ARMED.

1. By 2. Edw. 3. none, except the king's attendants, or officers and their aſſiſtants executing his precepts, or upon

upon a cry of arms, ſhall appear armed before any juſtices; nor ride armed in fairs or markets, on pain of forfeiting their armour and impriſonment, *Page* 20. ſ. 4

2. And all juſtices, magiſtrates, and peace-officers are to execute this act, upon pain of puniſhment by the judges of aſſize, *ibid.*

3. Proceedings may be either *ex officio* or by writ out of chancery; but a record of them ſhould be made and returned, if done *ex officio*, into the exchequer; if by writ, into chancery, 21. ſ. 5

4. Offenders may be impriſoned not only upon view of the offence, but upon an inqueſt taken of it, 21. ſ. 6

5. The under-ſheriff may execute the writ officially, except it be ſpecially directed, 21. ſ. 7

6. None ſhall wear armour publickly upon pretence of protecting his perſon; but a man may aſſemble his neighbours to protect his houſe, without incurring the penalties of the ſtatute, 21. ſ. 8

7. But no wearing of arms is within the ſtatute, unleſs they are ſuch as may terrify; therefore the weapons of faſhion, as ſwords, &c. or privy coats of mail may be ſafely worn, 21. ſ. 9

8. Neither are thoſe within the intention of it who arm for the purpoſe of ſuppreſſing dangerous, tumultuous, or noiſy inſurrections, 22. ſ. 10

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1. It is a common nuſance to divert part of a navigable river ſo as to weaken its current, 147

2. So alſo to lay timber in a public river ſo as to obſtruct its intercourſe, 147 *notis*

3. To place a floating dock in a public navigable river, however beneficial to the repair of ſhipping, is a nuſance, *ibid.*

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5. A river, common to all men, is called a highway, *Page* 152

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2. Nor for beating another in defence of his ſervant, 12

3. A ſervant is liable to ſuch forfeiture for beating another in defence of his maſter's ſon, 12

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4. By 4. Hen. 7. c. 3. no beaſts ſhall be killed in walled towns, *ibid.*
5. By 21. Hen. 8. c. 8. calves ſhall be killed at certain times only, *ibid.*
6. By 1. Jac. 1. c. 22. no calves ſhall be killed under five weeks old, *ibid.*
7. By 22. Hen. 8. c. 6. butchers ſhall not keep tan houſes, *ibid.*
8. Whether they may ſell to one another, *ibid.*

9. *Aliens*

9. *Aliens amie* may diſpoſe of their victuals, *Page* 319

10. By 25. Hen. 8. c. 2. the lord chancellor, &c. may ſet the prices upon victuals, 320

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12. By 2. & 3. Edw. 6. c. 15. if any butchers, brewers, bakers, poulterers, cooks, coſters, or fruiterers ſhall *conſpire* to raiſe the price of victuals, &c. they ſhall forfeit, &c. *ibid.*

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END OF THE SECOND VOLUME.



ERRATA ET ADDENDA.

Page 15, line 46, instead of "*lo*" read "*be.*"

Page 111, read "*For the offence of forging a bargain and sale, see the statute* 8. *Geo.* 2. *c.* 6. *s.* 31.

Page 293, note (1) instead of "*constitu*" read "*constitute.*"

Page 401, instead of "*Sect.* 26." read "*Sect.* 36." and so on numerically to the end of the Chapter.

Page 460, after Sect. 17. read "*See an Anonymous Case, Appendix to the Third Edition of Foster*" "*Crown Law, page* 439."

Page 540, after "*inhabit,*" read "*and see* 10. *Geo.* 2. *c.* 28. *ante, page* 531.